

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

ORIGINAL

75-7022

JOHN H. MARCHESE,

Plaintiff-Appellant,

-against-

MOORE-McCORMACK LINES, INC.,

Defendant and Third-  
Party Plaintiff-Appellee,

-against-

COURT CARPENTRY AND MARINE CONTRACTORS CO.,  
INC.,

Third-Party Defendant  
Appellee.

ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE EASTERN  
DISTRICT OF NEW YORK

APPENDIX

IRVING B. BUSHLOW  
Attorney for Plaintiff-  
Appellant  
Office & Post Office Address  
26 Court Street  
Brooklyn, New York 11242  
Telephone: 522-7446

(Cover Page 1)

B

P/S

*[Handwritten signature]*

J

PAGINATION AS IN ORIGINAL COPY

DOUGHERTY, RYAN, MAHONEY,  
PELLIGRINO AND GIUFFRA  
Attorneys for Defendant and  
Third-Party Plaintiff  
Moore-McCormack  
Office & Post Office Address  
576 Fifth Avenue  
New York, New York 10036  
By: Robert J. Giuffra, Esq.  
Telephone: (212) 765-7100

HERBERT LASKY  
Attorney for Third-Party  
Defendant Court Carpentry  
and Marine Contractors Co., Inc.  
Office & Post Office Address  
199 Church Street  
New York, New York 10007  
By: Raymond C. Green, Esq.  
Telephone: (212) 964-7100

# INDEX TO APPENDIX

	<u>PAGE</u>
Relevant Docket Entries .....	ii
Master's Report .....	iii
Order Confirming Master's Report and Dismissing Complaint .....	xiv
Judgment Appealed From .....	xvi
Notice of Appeal .....	xvii
Transcript .....	1a - 164a
JOHN H. MARCHESE	
Direct .....	11a
Cross (Moore-McCormack) .....	23a
Cross (Court Carpentry) .....	46a
Redirect .....	77a
ALPHONSO ANDERSON	
Direct .....	81a
Cross (Moore-McCormack) .....	88a
Cross (Court Carpentry) .....	101a
Redirect .....	115a, 118a
Recross .....	116a, 120a
NICHOLAS MARTINO	
Direct .....	123a
Cross (Moore-McCormack) .....	137a
Cross (Court Carpentry) .....	149a
Redirect .....	157a

RELEVANT DOCKET ENTRIES

Feb. 24, 1972	Complaint filed
March 23, 1972	Answer filed
March 23, 1972	Third party complaint filed
April 10, 1972	Third party defendant Court Carpentry filed answer and cross-claim
April 27, 1972	Third party defendant Universal filed answer and reply to cross- claim
April 29, 1974	Before Catoggio, Mag. trial commenced
Sept. 24, 1974	Master's report (Mag. Catoggio) filed
Oct. 4, 1974	Plaintiff filed objections to Master's report
Oct. 9, 1974	Notice of motion to confirm Mag. report
Oct. 16, 1974	Notice of cross-motion modifying and rejecting the Master's report
Oct. 18, 1974	Travia, J. - Defendant's motion confirming Master's report granted
Nov. 7, 1974	Travia, J. - Order of dismissal dated 11/6/74 - filed
Nov. 7, 1974	Judgment dismissing complaint - filed
Nov. 21, 1974	Notice of appeal filed

TO THE HONORABLE THE JUDGES OF THE UNITED STATES DISTRICT  
COURT FOR THE EASTERN DISTRICT OF NEW YORK

-----x

JOHN N. MARCHESE

Plaintiff

- against -

MOORE McCORMACK LINES, INC.,

Defendant and  
Third-Party  
Plaintiff

- against -

COURT CARPENTRY AND MARINE  
CONTRACTOR CO., INC., and  
UNIVERSAL TERMINAL & STEVEDORING  
CORP.

Third-Party  
Defendants

-----x

MASTER'S REPORT  
AFTER HEARING  
TESTIMONY UNDER  
F. R. Civ. P. 53

72 C 241

INTRODUCTORY STATEMENT

By stipulation of all parties entered into in  
writing and confirmed in open court (S. M. 3) it was  
agreed that the undersigned should hear the testimony in

## MASTER'S REPORT

Page Two

this action to recover damages for personal injuries and report his findings and conclusions to the Court in accordance with the provisions of the Federal Rules of Civil Procedure 53. It further was agreed by the several parties herein (S. M. 5) that the question of liability should be determined before any proof as to damages is submitted. Accordingly, this report deals only with the question of liability for the personal injuries which plaintiff claims to have sustained at the time of which he makes complaint.

### FACTS

The plaintiff a lasher carpenter in the employ of a private contractor, seeks damages from Moore McCormack Lines, Inc., as owner of the S. S. Mormacglan for injuries which he allegedly sustained while working on board the said ship on August 17, 1970 as she lay moored at Pier 23rd Street Terminal, Brooklyn, New York. He claims he was injured while unlashng pipes which had been loaded as cargo

## MASTER'S REPORT

Page Three

on the ship's deck in Brazil. The customary third-party complaint was served on plaintiff's employers, Court Carpentry and Marine Contractor Co., Inc., seeking indemnity. Under the mistaken belief that Universal Terminal & Stevedoring Corp., had had something to do with stowing the cargo on the ship's deck, a third-party complaint also was served on that company. However, at the commencement of the hearings before the undersigned, all parties consented to Universal's motion to dismiss the third-party complaint as to them as well as all counterclaims between them and any party in this suit, without costs. (S. M. 3).

The following are submitted as

### FINDINGS OF FACT

1. On August 17, 1970 the S. S. Mormacglen a large ocean going steamer owned, operated and controlled by the defendant Moore McCormack Lines Inc., lay moored at Pier 23rd Street Terminal, Brooklyn, New York.
2. The ship, a day or two before, had terminated a voyage from Brazil and had on deck as cargo, four pipes

## MASTER'S REPORT

Page Four

each of which was approximately twenty feet long and each of which had a diameter of about four feet. They were stowed at number five hatch so that three rested on the deck and one was on top of the others. Their length ran fore and aft between the hatch coaming and the ship's solid steel rail.

3. On August 17, 1970 the plaintiff was employed as a carpenter by Court Carpentry and Marine Contractor Co., Inc., who were under contract with Moore McCormack to release the lashing which held the deck cargo of pipes in place.

4. The plaintiff reported on board the Mormacglen on August 17, 1970 at about 8:00 A. M. and he commenced work on the forward part of the vessel unlashng cargo.

5. A snapper told him to go to number five hatch to unlash pipe cargo on the inshore side.

6. Plaintiff was told to work quickly because the longshore gang was standing by ready to discharge the cargo.

## MASTER'S REPORT

Page Five

7. The pipes were secured by wires which stretched over them and which were made fast to pad eyes on the deck.

8. There was only about 18 inch space between the pipes and the ship's rail.

9. The plaintiff was to release the wires which comprised the lashing of the pipes.

10. There were two ways in which the plaintiff could have released the lashing. In one way he would turn the turnbuckle and would have to continue turning until the total length of the thread was unscrewed. This was a slow method but it would have released the tension and tautness of the wire lashing less suddenly than by using the other method.

11. The other method for releasing the lashing, which was the one used by the plaintiff, was to unscrew two nuts on each of the two clips. This method permitted the tension and strain on the wire lashing to be released suddenly.

MASTER'S REPORT

Page Six

12. The plaintiff commenced the unlashings of the pipe cargo on deck and he had released two of the three wire lashings by unscrewing nuts on the clips as aforementioned and he was in the process of releasing the third wire lashing when the pipe cargo suddenly moved so that the plaintiff was pinned against the rail or bulwark of the ship. He claims to have suffered injuries to his knees and back as a result.

13. Unbeknown to the plaintiff, a co-worker of his had been directed to proceed to the same pipes and release the wire lashing. It is plaintiff's contention that when this co-worker released the third wire, the pipes rolled out and pinned the plaintiff.

14. Before plaintiff started to release the wire lashing he made no effort to determine whether the pipes were chocked or whether they would be held in position in any manner after the wire lashing was released.

15. The deck of the ship sloped toward the rail.

MASTER'S REPORT

Page Seven

16. The plaintiff adduced the testimony of Nicholas Martino a snapper and carpenter with twenty-three years experience, and he offered his testimony as an expert. This expert testified that if he was in plaintiff's position and if he did not see upright braces extending some four feet or more upward from the deck, (of which there concededly were none), he would look for chocks under the pipes before he would attempt to release the lashing.

17. The plaintiff admitted he had not looked for chocks.

18. These pipes had no chocks holding them in position. They were held in position only by the wire lashing.

19. The expert called by the plaintiff testified that the reasonable and prudent thing to do before attempting to remove the wire lashing from the pipes was to determine one way or another, whether there was chocking or stanchions to prevent the pipes from rolling when the tension of the wire lashing was released.

MASTER'S REPORT

Page Eight

20. Alfonse Anderson plaintiff's co-employee of Court Carpentry, testified that he was directed to "give Marchese a hand". He released one clip and was working on the second when the top pipe came down and the bottom pipes rolled to the ship's rail.

21. The pipes rolled and pinned the plaintiff because he had released the wire lashing without determining whether the pipes were chocked.

22. The plaintiff in oral argument has contended that at most he can be charged with contributory negligence and that the ship was unseaworthy since the manner in which the pipes were stowed did not permit the plaintiff to perform his unlashng work in safety. He further suggests that his co-worker Alfonse Anderson who was working to release the third of the three wire lashings when the pipes moved and pinned plaintiff against the rail, was the one who rendered the ship unseaworthy. All of the plaintiff's arguments fail and I find that until the plaintiff himself released a wire or wires holding the

## MASTER'S REPORT

Page Nine

pipes in position there was no danger to the plaintiff. In releasing the wire lashings the plaintiff should have realized that he was releasing a force which he had to control if he was to avoid injury. If plaintiff had unscrewed the turnbuckle it would have released the tension gradually. Instead, plaintiff did the work in a way that the tension was released suddenly. When two wires were released, all the tension was put on the third wire and plaintiff set to work to release this tension with suddenness while he was in the only location where he could get hurt - between the rail and the pipes. The plaintiff did not fulfill his duty to perform his work under all of the existing circumstances with reasonable care but instead he positioned himself in an unsafe place and this coupled with the way he performed his work brought about the injuries of which he makes complaint herein.

CONCLUSIONS

1. The plaintiff's reckless disregard for his own safety, the manner in which he did his work and the place where he positioned himself, were the sole causes of his injury.

2. The ship was not rendered unseaworthy by any condition on her deck or by any act of plaintiff's fellow employees.

3. The complaint should be dismissed as to the defendant Mcore McCormack.

4. The third-party complaint against Court Carpentry and Marine Contractor Co., Inc., should be dismissed.

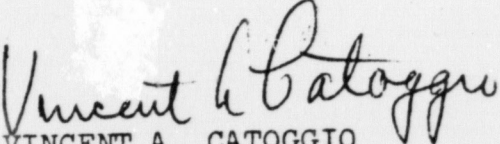
5. The third-party complaint against Universal Terminal & Stevedoring Corp., should be dismissed in accordance with the stipulation of the attorneys for the respective parties.

MASTER'S REPORT

Page Eleven

Filed herewith are the minutes of testimony taken before the undersigned with copies of this report for the several counsel herein.

Respectfully submitted,

  
VINCENT A. CATOGGIO  
United States Magistrate  
Eastern District of New York

Brooklyn, New York  
September 24, 1974

ORDER CONFIRMING MASTER'S REPORT  
AND DISMISSING COMPLAINT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

[ SAME TITLE ]

Defendant and third-party plaintiff, Moore-McCormack Lines, Inc. having moved this Court for an Order pursuant to Rule 53 (e) (2) of the Federal Rules of Civil Procedure to confirm the Master's Report of Magistrate Catoggio dated September 24, 1974 and for entry of judgment dismissing the plaintiff's complaint in accordance therewith, and the said Motion having come on to be heard before the Honorable Anthony J. Travia, United States District Judge on October 18, 1974 and the Court having confirmed the Magistrate's Order from the bench, it is

ORDERED that the plaintiff's complaint be dismissed as to the defendant Moore-McCormack Lines, Inc. and it is further

ORDERED that the third-party complaint against Court Carpentry & Marine Contractor Co., Inc. be dismissed and it is further

ORDER CONFIRMING MASTER'S REPORT  
AND DISMISSING COMPLAINT

ORDERED that the third-party complaint  
against Universal Terminal & Stevedoring Corp. be  
dismissed.

Dated: New York, New York  
November 6th, 1974

s/ Anthony J. Travia  
U.S.D.J.

F I L E D  
In Clerk's Office  
U.S. DISTRICT COURT E.D. N.Y.  
NOV 7, 1974

JUDGMENT APPEALED FROM

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

[ SAME TITLE ]

An order signed by the Honorable Anthony J. Travia, United States District Judge, having been filed on November 7, 1974, the court having confirmed the Magistrate's Order from the bench, ordering that the plaintiff's complaint be dismissed as to the defendant Moore-McCormack Lines, Inc. that the third-party complaint against Court Carpentry & Marine Contractor Co. Inc. be dismissed and that the third-party complaint against Universal Terminal & Stevedoring Corp. be dismissed, it is

ORDERED and ADJUDGED that judgment is entered dismissing the plaintiff's complaint as to the defendant Moore-McCormack Lines, Inc., that the third-party complaint is dismissed as to both Court Carpentry & Marine Contractor Co. Inc. and Universal Terminal & Stevedoring Corp. the Third-Party defendants.

Dated: Brooklyn, New York  
November 7, 1974

F I L E D  
In Clerk's Office  
U.S. DISTRICT COURT E.D. N.Y.  
Nov. 7, 1974

s/ Lewis Orgel  
Clerk

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

[ SAME TITLE ]

S I R S :

PLEASE TAKE NOTICE, that the plaintiff,  
John H. Marchese, appeals to the United States  
Court of Appeals from an order of Judge Anthony J.  
Travia, dated November 7, 1974, which order con-  
firmed the report of Magistrate Vincent A. Catoggio,  
dated September 24, 1974, and from a judgment dated  
and entered November 7, 1974, dismissing plaintiff's  
complaint.

Dated: Brooklyn, New York  
November 21, 1974

Yours, etc.,

s/ Irving B. Bushlow  
Irving B. Bushlow  
Attorney for Plaintiff  
26 Court Street  
Brooklyn, New York 11242

UNITED STATES DISTRICT COURT

1a

EASTERN DISTRICT OF NEW YORK

-----X

JOHN H. MARCHESE,

Plaintiff

-against-

MOORE-McCORMACK,

Defendant, and Third-  
Party Plaintiff,

-against-

COURT CARPENTRY AND MARINE  
CONTRACTORS CO. INC., and UNIVERSAL  
TERMINAL AND STEVEDORING,

Third-Party Defendants.

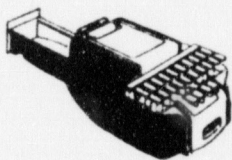
-----X

225 Cadman Plaza East  
Brooklyn, New York

April 29, 1974

b e f o r e :

THE HONORABLE MR. JUSTICE VINCENT A. CATOGGIO  
United States Magistrate  
Eastern District of New York



*Ak-Ret Reporting*

COURT STENOS

RICHARD S. DOWNEY  
RICHARD C. O'CONNELL

16 COURT STREET • BROOKLYN, N.Y. 11241 • TR 5-2442

1 A P P E A R A N C E S :

2a

2 IRVING B. BUSHLOW, ESQ.,  
3 Attorney for Plaintiff  
4 26 Court Street  
5 Brooklyn, New York

6 DOUGHERTY, RYAN, MAHONEY, PELLIGRINO AND  
7 GUIFFRA, ESQS.,  
8 Attorneys for Defendant and Third-  
9 Party Plaintiff MOORE-McCORMACK  
10 576 Fifth Avenue  
11 New York, New York  
12 BY: ROBERT J. GIUFFRA, ESQ.

13 HERBERT LASKY, ESQ.,  
14 Attorney for Third-Party Defendant  
15 COURT CARPENTRY AND MARINE  
16 CONTRACTORS CO. INC.  
17 199 Church Street  
18 New York, New York  
19 BY: RAYMOND C. GREEN, ESQ. of Counsel

20 COMMETTE, QUENCER AND ANNUNZIATO, ESQS.,  
21 Attorneys for Third-Party Defendant  
22 UNIVERSAL TERMINAL AND STEVEDORING  
23 60 East 42nd Street  
24 New York, New York  
25 BY: ALBERT S. COMMETTE, ESQ.

26 \* \* \*

27 THE COURT: This trial will now  
28 come to order.

29 The case is John H. Marchese  
30 versus Moore-McCormack Lines, Incorporated,  
31 versus Court Carpentry and Marine  
32 Contractors, Co., Inc. and Universal  
33 Terminal and Stevedoring Corporation.

1  
2 This matter is being submitted to  
3 me as a matter under Rule 53 of the  
4 Federal Rules of the Civil Procedure,  
5 that is to hear testimony and report  
6 to the Court, is that correct, gentlemen?

7 MR. BUSHLOW: Yes.

8 MR. GIUFFRA: Yes.

9 MR. GREEN: Yes.

10 MR. COMMETTE: Yes.

11 THE COURT: Now, the cost of  
12 the stenographic transcript is to be  
13 a taxable cost to all parties, is that  
14 so stipulated?

15 MR. BUSHLOW: Yes.

16 MR. GIUFFRA: Yes.

17 MR. GREEN: Yes.

18 MR. COMMETTE: Yes.

19 THE COURT: Is there anything  
20 anybody wishes to say before we commence  
21 with this case?

22 MR. COMMETTE: Your Honor, we are  
23 named a Third-Party Defendant and I  
24 have a motion to dismiss that which I  
25 believe will be consented to by the

1  
2 parties involved on the grounds that  
3 Universal had not stowed cargo, had not  
4 stowed the cargo in question. I think  
5 this was conceded at at a pre-trial  
6 conference before Your Honor, but is not  
7 yet a matter of record, but I understand  
8 that there is no objections to a motion  
9 to dismiss against Universal Terminal  
10 and Stevedoring Corporation.

11 MR. GIUFFRA: This is no objection,  
12 Your Honor.

13 MR. GREEN: No objections, Your  
14 Honor.

15 Your Honor, Court Carpentry has  
16 a cross-claim against Universal and we  
17 have no objections against the dismissal  
18 of that.

19 MR. GIUFFRA: Well, you have a  
20 ~~cross~~-claim against us.

21 MR. COMMETTE: I will withdraw  
22 that cross-claim. With respect to  
23 Universal, all the Third-Party complaints  
24 and all cross-claims have been withdrawn  
25 and that with respect to Universal, all

1  
2 cross-claims that have been interposed  
3 have been withdrawn in accordance with  
4 our agreement.

5 THE COURT: Has the Plaintiff  
6 made any claims directly against Universal?

7 MR. COMMETTE: The Plaintiff has  
8 made no claims against Universal, Your  
9 Honor.

10 MR. BUSHLOW: It is my understand-  
11 ing that Universal did not do the lashing  
12 of the pipes, and if I understand it  
13 correctly, that lashing was done somewhere  
14 in Brazil, is that right?

15 MR. GIUFFRA: I believe so.

16 THE COURT: Is that a factual  
17 stipulation between the three remaining  
18 attorneys?

19 MR. GIUFFRA: Yes.

20 MR. GREEN: Yes.

21 MR. BUSHLOW: Yes.

22 THE COURT: Mr. Commette, you  
23 maybe excused from this proceeding.

24 MR. COMMETTE: Thank you, Judge.

25 MR. BUSHLOW: I believe that we

1  
2 are trying this case in two parts, that  
3 is liabilities and then damages, am I  
4 right, Your Honor?

5 THE COURT: Well, whatever you  
6 want to do.

7 MR. BUSHLOW: I thought that that  
8 was our understanding.

9 THE COURT: If it's agreeable  
10 to all parties concerned, it's all  
11 right with me.

12 MR. GIUFFRA: No objections.

13 MR. GREEN: No objections.

14 MR. BUSHLOW: If Your Honor  
15 pleases, at this time, as long as there  
16 is no jury present, there was certain  
17 testimony by the Plaintiff in his  
18 Deposition relevant to whether or not  
19 he was working with a certain party,  
20 a co-worker that is, and whether or not  
21 this co-worker was a witness to the  
22 accident. At that time, he answered  
23 in the negative. Now, upon refreshing  
24 his recollection, it will be his  
25 testimony that he does remember that

1  
2 he was working with another co-worker  
3 and that I am now asking or to put it  
4 another way, giving an opportunity to  
5 the Defendants to bring in the boss of  
6 these two men on this particular day of  
7 the accident.

8 THE COURT: Who is the man whom  
9 you claim was with the Plaintiff?

10 MR. BUSHLOW: Anderson, Your  
11 Honor, his name is Anderson and may I  
12 say that in the Interrogatories of  
13 Court Carpentry, they do mention an  
14 Anderson as a witness to this accident.

15 THE COURT: Do you have his  
16 first name?

17 MR. BUSHLOW: Alfonso Anderson.  
18 Your Honor, in the Answers to the  
19 Interrogatories and I really don't know  
20 whether the originals were ever filed  
21 in this Court, there was a question as  
22 to whether or not any witnesses witnessed  
23 this accident and both Court Carpentry  
24 and Universal mentioned the name Alfonso  
25 Anderson as a witness to this accident

1  
2 and again, his name was brought up in  
3 the Deposition of the Plaintiff.

4 The Plaintiff was asked as to  
5 whether he knew an Anderson and as to  
6 whether he was working with Anderson,  
7 that would be presupposing some knowledge  
8 that Anderson was there.

9 MR. GREEN: Is Mr. Bushlow through,  
10 Your Honor, I would just like to know  
11 when he is because I don't understand  
12 what is going on.

13 MR. BUSHLOW: I'm finished.

14 MR. GREEN: Your Honor, frankly,  
15 I don't understand what this is all  
16 about. Mr. Bushlow seems to have  
17 discovered that his client testified  
18 falsely and now he wants to change his  
19 client's testimony and erase all that  
20 was said in a prior Deposition.

21 THE COURT: What he is doing, is  
22 putting everybody on notice that the  
23 position of the Plaintiff has changed  
24 or will change. In other words, up to  
25 now, the Plaintiff's position has been

9a

1  
2 that there was no one with him, now the  
3 Plaintiff's position will be that there  
4 was this man called Anderson with him.  
5 What he is doing, is putting you on  
6 notice of this fact, that's all he's  
7 doing.

8 MR. GREEN: Your Honor, he  
9 testified to those facts under oath,  
10 Your Honor, and secondly, he mentions  
11 a name of a boss and it's not clear to  
12 me who that is, who that really is.

13 MR. BUSHLOW: The name is  
14 Mitchell Ellis.

15 MR. GREEN: Your Honor, may I  
16 say that I have no such name in my files  
17 and I do not know whether such a person  
18 exists or not. I just don't know.

19 If Your Honor will look at the  
20 Interrogatories, you'll see that there  
21 was no such name mentioned in any of  
22 those Interrogatories.

23 THE COURT: Well, the papers that  
24 I have here in front of me, as a matter  
25 of fact, the top paper happens to be

1  
2 Answers to Interrogatories by Court  
3 Carpentry and Marine Contractors Co., Inc.,  
4 that's your client, isn't that, Mr. Green?

5 MR. GREEN: Yes, that's correct,  
6 Your Honor.

7 THE COURT: Now, answer #6 says  
8 Alfonse Anderson claims to be a witness to  
9 the accident.

10 MR. GREEN: There is no question  
11 about that, what I'm saying is is that  
12 this Plaintiff has testified at an  
13 examination before trial that he was  
14 working alone, but we know that Alfonse  
15 Anderson claims to have been witness,  
16 and now, the Plaintiff, today, is saying  
17 that he wants to wipe out all prior  
18 testimony and wants to change it all  
19 around.

20 MR. BUSHLOW: He wants to explain  
21 his position.

22 THE COURT: He merely wants to  
23 explain an error on his part.

24 MR. GREEN: Well, Your Honor, I'm  
25 very much surprised at what has gone on

up to now.

THE COURT: We will continue with  
this proceeding.

Mr. Bushlow, is your witness here?

MR. BUSHLOW: I would like to  
call Mr. John H. Marchese to the stand.

(Whereupon, the witness approached  
the stand.)

THE COURT: Will you raise your  
right hand?

THE WITNESS: Yes.

THE COURT: Do you solemnly swear  
that the testimony you are about to  
give will be the truth, the whole truth  
and nothing but the truth, so help you  
God?

THE WITNESS: Yes.

THE COURT: What is your name?

THE WITNESS: John H. Marchese.

THE COURT: All right, Mr. Bushlow,  
you may proceed.

DIRECT EXAMINATION BY

MR. BUSHLOW:

Q What is your address?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A 73 Greenfield Avenue, Staten Island,  
New York.

Q Mr. Marchese, how old are you?

A 35 years old.

Q On August 17, 1970, were you involved  
in an accident?

A Yes.

Q What was your occupation at that time?

A A lasher.

Q What is your occupation today?

A Carpenter.

Q On the day of this accident, by whom  
were you employed?

A C & C Lumber.

Q In what capacity were you employed on  
this particular day?

A On lashing.

Q Do you recall what time you started to  
work that day?

A 8 o'clock.

Q Do you recall what pier?

A 23rd Street pier, Brooklyn, New York.

Q Do you remember the name of the vessel?

A The Mormac Glen.

1  
2 Q Who was your immediate supervisor aboard  
3 that vessel?

4 A Mitchell Ellis.

5 Q Was he a lasher?

6 A He was a snapper.

7 Q Who was your general foreman?

8 A Gus Genovese.

9 Q He was general foreman for C & C Lumber?

10 A Yes.

11 Q Was he a general over both the carpenters  
12 and the lashers?

13 A Yes.

14 Q When you got on board at 8 o'clock, were  
15 you told to go to any particular part of this vessel?

16 A The forward part.

17 Q Do you remember what hatch you went to?

18 A No.

19 Q What were your particular duties at that  
20 forward part?

21 A To unlash.

22 Q What were you going to unlash?

23 A Whatever cargo was on the deck.

24 Q Do you remember what cargo was there?

25 A No.

1  
2 Q Did there come a time when you had to  
3 go to another place of the ship?

4 A Yes.

5 Q Who told you to go to another part of  
6 the ship?

7 A My snapper.

8 Q What is his name?

9 A Mitchell Ellis.

10 Q Where did he tell you to go?

11 A Number 5.

12 Q Did he tell anyone else to go with you?

13 A I don't remember.

14 Q When you went to number 5, did you see  
15 what kind of cargo was on the deck?

16 A Yes.

17 Q Was this on the inshore or the offshore  
18 side?

19 A The inshore side.

20 Q What kind of cargo was this?

21 A Pipes.

22 Q Now, I show you a photograph and ask  
23 you if that fairly and accurately represents the type  
24 pipes that were on the deck when you got there on the  
25 morning of your accident?

1

2

A Yes, similar to these.

3

MR. BUSHLOW: I offer these in

4

Evidence.

5

THE COURT: Any objections?

6

MR. GREEN: Let's see them first.

7

MR. GIUFFRA: Let's see them first.

8

THE COURT: Here they are,

9

gentlemen.

10

MR. GREEN: No objections.

11

MR. GIUFFRA: No objections.

12

THE COURT: This will be Exhibit

13

#1 in Evidence.

14

(Whereupon, the Court marked the

15

said above photograph Exhibit #1, in

16

Evidence.)

17

DIRECT EXAMINATION BY

18

MR. BUSHLOW:

19

Q Now, Mr. Marchese, do you remember what

20

hatch this was?

21

A Number 5.

22

Q Do you know what time you were told to

23

go down to number 5 hatch?

24

A Around 9 o'clock.

25

Q In the morning?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Yes.

Q Now, was number 5 hatch being worked on, by that I mean, were there any longshoremen there?

A They were there, but they were not working.

Q Was the hatch open?

A I don't remember.

Q What were you told to do by your snapper as far as the time element is concerned, what were you told?

MR. GREEN: Objection, Your Honor, leading the witness and suggestive.

THE COURT: I'll sustain it.

Rephrase your question, Mr. Bushlow.

Q What was told to you by your snapper, if anything, when he sent you to number 5 hatch?

A He told me to do number 5 quickly because the gang was standing by.

Q When you got there, will you tell us how many pipes or tubes were resting on the deck?

A Three.

Q What portion of the deck, from the rail to the coaming, did they cover?

A I would say most of it, you had maybe a foot and a half on each side.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Could you tell us how high these pipes were, what were the diameters of these pipes, to the best of your knowledge?

A 4 or 4 1/2 feet.

Q You said there were how many pipes?

A There were four.

Q Well, you said three before.

A There were three touching the deck, four in all.

Q How many were touching the deck?

A Three.

Q Where was that fourth pipe?

A On top of the three that were on the deck.

Q Now, when you got there, did you see how those pipes were secured?

A Yes.

Q How were they secured?

A They had wires on them.

Q How many wires did they have on them?

A I believe three.

Q How long were those pipes, approximately?

A I would say around 20 feet.

Q Would you please tell the Court what you started to do when you got there?

A I started to unlash the pipes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q In what manner would you unleash these pipes?

A You would disconnect the clips with your wrench.

Q Would you use a turnbuckle in this process?

A No, not if you have to do it fast.

Q How many wires had you taken off before your accident happened?

A I believe, two.

Q And you were working on the third wire when your accident happened?

A Yes.

Q Could you tell us what happened while you were working on the third wire?

A Well, as I started to take off the clip, the pipes came out.

Q What happened to you?

A I got pinned up against the bullwalk.

Q Was that the rail of the ship, is that what you mean by the bullwalk?

A Yes.

Q Where were you standing just before this accident?

A I was facing the pipes.

Q Were you standing between the pipe and the bullwalk?

A Yes.

Q Could you see over the pipes to the coaming?

A No.

THE COURT: You could not see?

THE WITNESS: No.

THE COURT: Continue, Mr. Bushlow.

MR. BUSHLOW: Thank you, Your

Honor.

DIRECT EXAMINATION BY

MR. BUSHLOW:

Q How high would you say, in front of you, was those pipes resting on the deck and the pipes resting upon the pipes, how high would you say that was?

A About 8 feet.

Q How tall are you?

A 5'11".

Q What happened to you after that, how did you get off the vessel?

A I was taken off in a basket.

Q Now, prior to commencing the unlashings,

1  
2 did you observe or did you look to see if there were  
3 any chocking underneath this pipe?

4 A No.

5 Q Prior to your beginning this unlashing,  
6 did you know whether this pipe was resting on the deck  
7 or whether it was resting on any other objects?

8 A I did not see anything.

9 MR. GREEN: Objection, Your Honor.

10 I move to strike out the witness' answer  
11 as not responsive to the question.

12 THE COURT: Strike out that  
13 answer and strike out the question. I  
14 move that the question and answer be  
15 stricken.

16 Q How long had you been a lasher before  
17 this accident occurred?

18 A About 7 years.

19 Q How long, all totaled, at the time of  
20 the accident, had you worked on the waterfront as a  
21 lasher or a carpenter or in any other capacity?

22 A Do you mean when I first started?

23 Q When did you first start to work on  
24 the waterfront?

25 A 1961 or 1960.

1  
2 Q So, by the time of this accident, you  
3 had put in approximately 10 years on the waterfront,  
4 is that correct?

5 A Yes.

6 Q And about 7 years as a lasher, is that  
7 correct?

8 A Between 5 and 7, yes.

9 Q What were the other kinds of work that  
10 you did those other time?

11 A Longshore work.

12 Q What is your position today?

13 A Carpenter.

14 Q When did you become a carpenter?

15 A Well, in 1964, I became a carpenter and a lasher.

16 Q Both?

17 A Yes.

18 Q Are you doing any lashing work now?

19 A No.

20 Q For how long a period of time have you  
21 not done any lashing work?

22 A Since the middle of 1971.

23 Q Do you recall, sir, that sometime in  
24 November of 1972, you were at an attorney's office  
25 where you were asked certain questions and gave certain

answers?

A Yes.

Q Do you recall, sir, that among the questions that were asked of you, you were asked whether you were working alone or whether you were working with a partner?

MR. GREEN: Objection.

MR. GIUFFRA: Objection.

MR. GREEN: He is paraphrasing what is in the examination before trial and he is further trying to impeach his own witness. We have no objections, Your Honor, if he wants to ask were you asked these questions and if you gave these answers. I have no objection to that, Your Honor.

MR. BUSHLOW: I will leave it to the Defense, Your Honor. I have no further questions.

THE COURT: All right. Defense may proceed with cross-examination.

MR. GIUFFRA: I will begin, Your Honor.

CROSS-EXAMINATION BY

AK-REPORTING, INC.  
COURT STENOS

RICHARD S. DOWNEY  
RICHARD C. O'CONNELL

1  
2 MR. GIUFFRA:

3 Q Mr. Marchese, when you were on board  
4 this vessel at 8 o'clock, were you given your work  
5 assignment for that day?

6 A No.

7 Q Were you told at 8 o'clock what type of  
8 work you were to be doing?

9 A Unlashing.

10 Q Unlashing deck cargo?

11 A Yes.

12 Q And you were working for about an hour  
13 unlashing cargo at the forward end of the vessel  
14 before you were told to go some place else, is that  
15 correct?

16 A Yes.

17 Q And then your supervisor told you to  
18 go aft, is that correct?

19 A Yes.

20 Q When you approached this pipe, did you  
21 observe any ships' officers in that area?

22 A No.

23 Q No one from the ship was there?

24 A I don't remember.

25 Q Now, these pipes, how were they lashed,

1  
2 you said wires, how many were there?

3 A I believe three.

4 Q In other words, looking at this photograph  
5 and describing how the wires were, would it be fair  
6 to say that one wire was at the beginning of the pipe?

7 A I believe one at the forward end, yes.

8 Q Would one be in the middle and one  
9 at the other end?

10 A Yes.

11 Q And that was securing the three pipes  
12 that were laying on the deck and the one pipe that was  
13 on top of the three pipes, is that correct?

14 A Yes.

15 Q Now, what about underneath the pipes,  
16 did you see any wood or chocking or anything like that?

17 A No.

18 Q Did you look for it?

19 A No.

20 Q You did not look for it?

21 A No.

22 Q When you went to this area, which clip  
23 did you take off first, that is, which wire did you  
24 work on first, would it be the middle one or the far  
25 end one or the other end or what?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A The most forward one.

Q The forward one?

A Yes.

Q How long did it take you to take off the clip off the forward wire securing those four pipes?

A A couple of minutes.

Q While you were doing this, were you standing on top of the pipes?

A No.

Q In other words, you could reach over and loosen the clip, is that correct?

A Well, they're right in front of me.

Q Now, when you went to the next wire, which wire was it?

A The middle one.

Q Now, to get to the middle one, did you have to stand on the pipes?

A Well, you could not stand, you'd have to squeeze through.

Q In other words, you did not touch the pipes at all, is that your testimony?

A That's correct.

Q And you were still able to reach and unlash the clips?

1  
2 A You did not have to reach, they were right  
3 in front of you, all you had to do was squeeze through.

4 Q Where did you squeeze through?

5 A Between the bullwalk and the pipe.

6 Q In other words, as you were going along  
7 the bullwalk, there was a passage of some sort, is  
8 that correct?

9 A Yes, but you could not walk, you had to move  
10 sideways through it.

11 Q What was the space between the pipe  
12 closest to the bullwalk and the bullwalk of the ship?

13 A 18 inches.

14 Q Did you notice if there were any stiffeners  
15 in the area?

16 A I believe so.

17 Q How far did they protrude onto the deck?

18 A I don't know.

19 Q Well, is it your testimony that in that  
20 18-inch space, you squeezed through, is that correct?

21 A Yes.

22 Q And then removed the second wire, which  
23 would be the middle wire, is that correct?

24 A Yes.

25 Q At any time, had you touched the pipes

1  
2 prior to moving to the second clip or second wire?

3 A You have to touch the pipe, you have to touch  
4 the handrails to get through, you slide through past  
5 the both of them.

6 Q When you removed the first clip or the  
7 first wire, you had to sort of juggle loose the wire,  
8 is that correct?

9 A I believe it did not have to be juggled, it  
10 was loose.

11 Q Did you sort of have to juggle the wire  
12 for the second clip?

13 A No, I don't believe so.

14 Q Well, did you?

15 A No, I don't believe so.

16 Q Now, when you got down to the third  
17 wire, had there been any movement at all that you  
18 noticed of the pipes at any time?

19 A No.

20 Q Never?

21 A No.

22 Q Now, when you were removing the clip  
23 on the third wire, which was at the after end of the  
24 pipes towards the back of the ship, what happened then,  
25 did you remove the clip?

1  
2 A I started to and that's when the pipe came down.

3 Q Was the wire taut on the third wire at  
4 this point?

5 A Yes.

6 Q It was taut?

7 A Yes.

8 Q Well, when you take the clips off, there  
9 are sort of like a couple of nuts on there, is that  
10 correct?

11 A That's right.

12 Q How many nuts were securing that wire?

13 A I believe two nuts.

14 Q Had you removed the first nut before  
15 this accident happened?

16 A No, I had just gotten it loose; I did not get  
17 it off.

18 Q So, the second one, of course, was not  
19 touched at all, is that correct?

20 A No.

21 Q And you were doing this work all by  
22 yourself?

23 A That's right.

24 Q Now, as you started to loosen up this  
25 first nut on the third clip, was that when the pipes

1  
2 started to roll?

3 A Yes, that's just when they let go.

4 Q Now, what happened to that clip, did  
5 that break away or what?

6 A I don't know.

7 Q Was the wire still secured?

8 A I don't know.

9 Q Did you look at that when you were  
10 sitting there on the deck?

11 A You mean look at it when it fell on me?

12 Q Yes.

13 A No, I did not.

14 Q Did you look at the wire at any time  
15 before you were removed from the ship?

16 A No.

17 Q Do you know whether the wire was still  
18 secured after that?

19 A I could not tell you, I don't know.

20 Q You have no idea whatsoever?

21 A No.

22 Q Now, when the pipes started to roll,  
23 you said there was about a distance of 18 inches  
24 between the pipes and the bullwalk?

25 A That's right.

1  
2 Q Did the pipes sort of stop at one point,  
3 did they hit the sides of the ship, is that what  
4 happened?

5 A All I know is that they stopped when they hit me.

6 Q What part of your body was injured at  
7 this time?

8 A My back and my legs.

9 Q Are you saying both legs?

10 A That's right.

11 Q What part of your back?

12 A The lower back.

13 Q Is that because you were pushed up  
14 against the bullwalk that you hurt your lower back?

15 A No, when they came down, I tried to turn and  
16 get out, and it pushed me up against the handrail.

17 Q Was this a quick movement or a slow  
18 movement or what?

19 A I would not say it was very fast, no.

20 Q In other words, as the pipes started to  
21 roll and you saw them rolling and tried to get out  
22 of the way, is that correct?

23 A That's right.

24 Q As you were unloosening this nut on  
25 this third wire, did you step on the pipes?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A No.

Q You did not touch the pipes at all?

A No.

Q You indicated, in previous testimony, that your snapper told you to do the work quickly, is that correct?

A That's right.

Q When he used the word "quickly", in the maritime industry, doesn't that mean to do your work promptly, isn't that so?

MR. BUSHLOW: Objection, Your Honor. I think that's a characterization on the part of the Defense attorney.

THE COURT: Objection sustained.

Q What do you mean by quickly?

A Fast.

Q That's normally done on the waterfront, don't you usually work quickly on the waterfront?

A Not necessarily, no.

Q Did you supervisor tell you that longshoremen were waiting to discharge cargo?

A That's right.

Q Which would include the pipes, I take it?

A That's right.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q And it was your job as a lasher to  
unlash these pipes, is that correct?

A That's right.

Q So, this other gang that started work  
at 8 o'clock should have started discharging cargo,  
is that correct?

A Yes.

Q When he said "quickly", he just said to  
turn off the nuts quickly, is that true?

A He told me to unleash it.

Q Did you unloosen the first wire quicker  
than you would have normally have done it?

A Yes.

Q You did?

A Yes.

Q In what way did you do it quicker?

A In other words, you spin the nuts off.

Q In other words, you put your ratchet  
on it and spin it off?

A That's right.

Q How would you normally do it?

A You would take them off slow, if you have the  
time.

Q Would you always spin the nuts off?

A Well, there are two ways of spinning them off.

Q In other words, you did it the quicker way, is that correct?

A That's right.

Q When you went to the area and observed the pipes on the deck, had you ever observed similar pipes like the ones that you observed that day?

MR. BUSHLOW: Prior to this accident?

MR. GIUFFRA: Yes.

THE WITNESS: No.

Q Had you ever discharged similar cargo, I mean had you ever unlash similar cargo before?

A Could you repeat that?

Q Did you ever unlash similar cargo in your experience before this accident?

A Yes.

Q In other words, similar cargo being pipes, is that correct?

A Yes.

Q And they would be stowed in the same methods as these were stowed, is that correct?

A Similar, yes.

Q In other words, they would have wires

1  
2 around them, is that correct?

3 A Yes.

4 Q And your job as an unlasher would be  
5 to go along and unlash these wires, is that correct?

6 A That's right.

7 Q That's the way it's normally done, is  
8 that correct?

9 A Right.

10 Q Now, aside from having as part of your  
11 equipment a ratchet, did you have any other equipment  
12 with you?

13 A No.

14 Q That's all you had?

15 A That's it.

16 Q Did you have any chocking materials  
17 with you?

18 A No.

19 Q Nothing at all?

20 A No.

21 Q In your experience with similar type  
22 cargo, it was lashed with wires also, is that correct?

23 A Yes.

24 Q Now, after the accident occurred, did  
25 you observe or notice any ships' officers in the area?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A No.

Q Did you ever speak to anyone from the ship at any time?

A No.

Q Now, after the accident, did you make a report to anyone?

A No.

Q Did you speak to your timekeeper?

A No.

Q You gave no statement to anybody?

A No.

Q No one?

A Not that I remember.

Q Now, have you lived continuously at that Staten Island address since the accident?

A Yes.

Q Now, when you were doing this work, removing the clips, was anyone else helping you at all?

A Not where I was.

Q In other words, you were doing the work by yourself?

A On my side, yes.

Q Is that a one-man job?

A Only one man can get in there.

1  
2 Q You said, on your side, was there someone  
3 else on the other side?

4 A I believe there was another man.

5 Q Who was that, if you recall?

6 A Anderson.

7 Q Now, do you know what Anderson was doing?

8 A I guess he was doing the similar work that I  
9 was doing.

10 Q In other words, there were clips on  
11 both sides, is that correct?

12 A That's right.

13 Q In other words, these wires were clipped  
14 on both ends?

15 A That's right, they were spliced.

16 Q Did he remove wire number one at the  
17 same time you removed wire number one?

18 A I don't know.

19 Q In other words, he was working independ-  
20 ently of you?

21 A Yes.

22 Q In other words, he may have already  
23 removed the third wire at the time of your accident,  
24 is that correct?

25 MR. BUSHLOW: Objection, it is

purely speculative. I object to the question.

THE COURT: Well, are you going to withdraw the question?

MR. GIUFFRA: The question is withdrawn, Your Honor.

CROSS-EXAMINATION BY

MR. GIUFFRA:

Q Did you, prior to unlashng the pipes, see whether the cargo was chocked?

A No.

Q Working on the waterfront for about 10 years, would it be fair to state that realized that vessels have a sort of a slant to them, that is the deck?

A I never realized it, no.

Q You never realized that?

A No.

Q Were you ever on board a vessel when it was raining, for example?

A Yes.

Q Well, doesn't the water normally flow off the side of the ship?

A Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Would that give you, in your mind,  
an indication that the deck was slanted?

A Yes.

Q And especially back in number 5 hatch, it  
would have had been a steeper slant, is that correct?

MR. RUSHLOW: Objection. I

object to the word "especially".

MR. GIUFFRA: I'll rephrase it,

Your Honor.

Q Well, based upon your experience or  
recollection, would the deck by the number 5 hatch  
have a steeper slant to it?

A I don't know.

Q But, you know that it had a slant to it,  
is that correct?

A You're telling me that, you're telling me about  
the rain going off the deck and I am saying yes to  
you, if that's what you mean.

Q In other words, based on your experience  
and up until the time of the accident when you were  
working on ships, would you say that the decks do  
have a certain slant to them?

A I never paid any attention to it.

Q And wouldn't it be logical to assume that

1 when you removed the wires, the pipes would move?

2 MR. BUSHLOW: Objection, Your

3 Honor.

4 THE COURT: Objection sustained.

5 MR. GIUFFRA: I'll rephrase it.

6 CROSS-EXAMINATION BY

7 MR. GIUFFRA:

8 Q Before you indicated that the height of  
9 the pipes was around 8 feet, is that correct?

10 A I said between 4 and 4 1/2 feet a piece.

11 Q The first layer of pipe?

12 A That's right.

13 Q Where was this fourth pipe that was  
14 on top of those pipes?

15 A It was on top of the other three, between  
16 two of the pipes that were on the deck.

17 Q Well, assuming that you're starting  
18 from the coaming of the hatch to the pipes, and the  
19 pipes are numbered 1, 2 and 3, where was the fourth  
20 pipe, was it between 2 and 3 or 1 and 2?

21 A 1 and 2.

22 Q In other words, closer to the coaming?

23 A Yes.

24 Q That's where the other pipe was resting?

1  
2 A Yes.

3 Q Is this the area where Anderson was  
4 removing the clips?

5 A I believe so.

6 Q Do you know if he was standing on the  
7 pipe?

8 A I could not see that.

9 Q Now, do you recall testifying in our  
10 office on November 9, 1972 in which various questions  
11 were asked of you by Mr. Pelligrino?

12 THE COURT: Where is your office?

13 MR. GIUFFRA: 576 Fifth Avenue,  
14 New York City.

15 THE WITNESS: I don't remember  
16 the questions.

17 THE COURT: Do you remember  
18 going there?

19 THE WITNESS: I remember going  
20 there, yes.

21 CROSS-EXAMINATION BY

22 MR. GIUFFRA:

23 Q Do you recall being asked this question?

24 MR. BUSHLOW: What page are you  
25 referring to?

MR. GIUFFRA: Page 26, line 21.

THE WITNESS: What question?

Q I'll ask you that question.

THE COURT: He will read it to you.

THE WITNESS: Okay.

MR. GREEN: Line 17, first.

"QUESTION: How long did it take  
you to do that?

ANSWER: Two minutes.

QUESTION: At this time, no one  
was working with you?

ANSWER: No."

Q I have just read to you a couple of  
questions and answers from your Deposition. Are those  
answers correct?

A They were correct for where I was working. I  
was working alone.

Q I see.

And Anderson was on the other side, I  
take it?

A That's right.

Q You're definite of that fact?

A Yes.

THE COURT: Were you working as

1  
2 a team or were you working individually?

3 THE WITNESS: Well, you could  
4 work either way, Your Honor.

5 THE COURT: What were you doing?

6 THE WITNESS: Well, I was working  
7 alone.

8 THE COURT: And Anderson was  
9 working alone?

10 THE WITNESS: Yes.

11 CROSS-EXAMINATION BY

12 MR. GIUFFRA:

13 Q Now, referring again to the examination  
14 before trial, where you testified under oath, I'm  
15 now referring to page 50, line 15. I am now going  
16 to read some questions and answers from this Deposition:

17 "QUESTION: Did you tell us earlier  
18 that you were alone during the unlashng  
19 and that no other lasher was working with  
20 you?

21 ANSWER: I did not see no one.

22 As far as I know, I was by myself."

23 Q Do you recall giving that answer?

24 A Yes.

25 Q And at that time, you testified under

oath that you were working by yourself, is that correct?

A I could not see the other individual on the other side of the pipe.

Q I am now referring, again, to the Deposition, page 12 and page 13:

"QUESTION: Were you working with anyone in particular at the time of your accident?

ANSWER: No."

Q Do you recall being given that question and giving that answer in response to that question?

A Yes.

Q Is that a correct answer at the time that you made it?

A Well, I found out later on --

Q Well, at the time that you were testifying under oath, was that a correct answer?

A That's correct.

Q And that was your answer at that time, is that correct?

A That's right.

Q I'm going to read you some more:

"QUESTION: Were you working alone?

ANSWER: Yes."

MR. BUSHLOW: What page is that?

MR. GIUFFRA: The following page.

MR. BUSHLOW: Thank you.

Q Was that answer to that question correct at that time?

A Yes.

MR. GIUFFRA: I have no further questions.

MR. GREEN: I have questions of the witness.

CROSS-EXAMINATION BY

MR. GREEN:

Q Are you telling us today that you did not look to see whether the pipe was touching the deck or not at that time?

A That's right.

Q That's what you're telling us today, is that what you're telling us today that you did not look to see where the pipes were resting on the deck?

THE COURT: Which pipes?

MR. GREEN: The three pipes.

THE COURT: Proceed.

Q Are you telling us today that you did

not, at no time, look to see whether the three pipes,  
that is the three lower pipes, were resting directly  
on the deck or not?

A No.

Q Well, do you remember being asked this  
question at your examination before trial?

MR. BUSHLOW: What page?

MR. GREEN: Page 16.

"QUESTION: Were the four of them  
touching the deck?

ANSWER: No."

Q Do you remember being asked that?

A Yes.

Q Do you remember being asked this  
question:

"QUESTION: And were they piled  
in some way?

ANSWER: They were touching the  
deck, three were touching the deck and  
one was on top of the other three."

Q Did you give that answer?

A That's right.

Q What are you telling us today about  
that situation?

1

2

A The same thing.

3

Q That there were three pipes resting on the deck, is that what you're telling us?

5

A I am saying that they were resting on the ship; I don't know if they were resting on the deck or not.

7

Q Sir, in addition to your experience as being a marine carpenter and a marine lasher and a longshoreman, do you have any other experience on a ship?

10

11

MR. BUSHLOW: What do you mean?

12

Do you mean if he was employed?

13

MR. GREEN: It's a very simple

14

question, Mr. Bushlow.

15

THE COURT: Were you ever in a

16

crew on a ship?

17

THE WITNESS: No.

18

CROSS-EXAMINATION BY

19

MR. GREEN:

20

Q Where you ever in the Navy?

21

A Yes.

22

Q Were you in the Navy for 4 years?

23

A That's right.

24

Q You know the difference between resting

25

on a deck and resting on a ship, don't you?

1  
2 A I was an engineer, I was not a deckhand.

3 Q So, you know nothing about the decks,  
4 is that what you're telling us?

5 A I know about the decks.

6 Q So, when you were asked the question  
7 as to whether or not they were piled up in some way and  
8 you gave the answer that they were touching the deck,  
9 that the three of them were touching the deck and that  
10 one was on top of the other three, didn't you mean  
11 that three were resting directly on the deck, and  
12 touching it?

13 A No, they were just laying on the deck.

14 Q In all your experience on ships, did  
15 you ever hear the term scuppers?

16 A No.

17 Q On the ship that you were on in the Navy,  
18 was there a little channel along the bullwalk that  
19 water could run off into?

20 A I don't know, I was never on the deck.

21 Q You were never on the deck in those  
22 4 years?

23 A I was never a deckhand.

24 Q Is it your testimony that you were never  
25 on a deck at any time?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Of course, I was on the deck, but I never noticed.

Q And you were on a deck when you were a lasher, is that correct?

A Yes.

Q And you were on a deck when you were a longshoreman, is that correct?

A Yes.

Q Well, did you see a little gutter or a channel running along where water would run into?

A I never paid any attention to it.

Q Well, are you telling us now that you did not know that a ship's decks are slanted to the rails so that water could run off them?

A I know it now.

Q Did you know it, in your experience, before this occurrence?

A No.

Q You never knew about it?

A No.

Q Now, you were telling us that the snapper said and let me see if I could get it right, that you would have to do it fast, is that correct?

A That's right.

1  
2 Q When did you first tell anyone that the  
3 snapper said that you had to do it fast?

4 A When did I tell anyone?

5 Q When did you first tell anybody that?

6 A I don't remember.

7 Q Did you tell anyone at all that the  
8 snapper told you to do it fast before you told us here  
9 today?

10 A I don't remember, but you have the papers in  
11 front of you; I don't have them. I just don't know.

12 Q Did you ever tell anyone that the snapper  
13 told you to do it fast before you testified that the  
14 snapper had told you to do it fast this very day?

15 A I don't remember.

16 Q Well, do you remember your examination  
17 before trial, page 13, line 6?

18 A No.

19 Q Do you remember being asked this  
20 question and giving this answer?

21 A What question, what answer?

22 Q I'll read it to you.

23 A Okay.

24 "QUESTION: Had you been given any  
25 specific orders to do the work which

you were doing when the accident happened?

ANSWER: Yes."

Q Do you remember saying that?

A Yes.

Q Was that true?

A Yes.

MR. GREEN: I'll read you some more.

"QUESTION: First, tell me what the orders were and by whom they were given to you?

ANSWER: Unlash the pipes in number 5 and it was by my snapper."

Q Do you remember saying that?

A Yes.

Q Were you asked those questions and did you give those answers?

A Yes.

Q You did not tell anybody about the snapper telling you to do it fast, then, did you, sir?

MR. BUSHLOW: I object, Your Honor. The Deposition speaks for itself.

MR. GREEN: This is a cross-examination.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. BUSHLOW: You're cross-examining him on questions and answers that speak for themselves. If he was asked that question, the answer would be in the examination before trial. There's no sense in reading it to him.

THE COURT: I will sustain the objection.

MR. BUSHLOW: Thank you, Your Honor.

THE COURT: Do you have any recollection now, of testifying at an examination before trial, that you were told by the snapper to do the work quickly, do you remember saying that at an examination before trial?

THE WITNESS: I don't remember.

THE COURT: You don't remember saying that?

THE WITNESS: No.

THE COURT: All right. Proceed, Mr. Green.

CROSS-EXAMINATION BY

MR. GREEN:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q You were asked what the snapper had told you, is that correct?

A Yes.

Q And the answer that you gave was to unleash the pieces on number 5, is that correct?

A Yes.

Q There is nothing in there about doing it quickly, is that correct?

MR. BUSHLOW: Objection, Your Honor. The examination before trial speaks for itself.

THE COURT: Objection sustained.

MR. GREEN: All right, all right.

Q Sir, when you unleash by turning the turnbuckles, how do you do that?

A Unlashing with the turnbuckles?

Q Yes.

A You have to remove the whole buckle until the eye falls out.

Q You unscrew it?

A Yes.

Q When you unscrew it, how far does the screw go?

A The length of the thread.

1  
2 Q How long is a thread on a turnbuckle,  
3 or I should say, how long was the thread on the  
4 turnbuckle involved in this situation on this particular  
5 day of your accident?

6 A I don't know. I did not touch the turnbuckle.

7 Q Well, you saw it, did you not?

8 A Yes, I saw it.

9 Q Well, what was the size of the turnbuckle?

10 A I would say 1 by 18.

11 Q 18 feet long?

12 A No, 18 inches.

13 Q What do you mean by 1?

14 A 1 inch in diameter.

15 Q 1 inch diameter of the screw?

16 A Yes.

17 Q 18 inches long?

18 A Yes.

19 Q And the thread?

20 A What about it?

21 Q What was the length of the thread?

22 A 18 inches, I just told you that.

23 Q So, you would unscrew 18 inches of  
24 the thread, is that correct?

25 A No, you would unturn 36 inches of the thread

1  
2 through the end of the turnbuckle.

3 Q So, when you unloosened the turnbuckle,  
4 it would unthread 36 inches worth, is that correct?

5 A That's right.

6 Q That would be a gradual loosening of  
7 the turnbuckle, is that correct?

8 A That's right.

9 Q What you are telling us today is that  
10 you would not touch the turnbuckle in this situation  
11 because you were told to do it fast, is that right?

12 A That's right. I did not do it that way.

13 Q But, you did not tell us when we had  
14 an examination before trial of you back in November  
15 of 1972, anything about being told to do it fast, is  
16 that correct?

17 MR. BUSHLOW: Objection. The  
18 Deposition speaks for itself. Whatever  
19 questions were asked of him, he answered  
20 them, at that time, to the best of his  
21 ability.

22 THE COURT: I don't see how you  
23 can get around that objection, Mr. Green.  
24 I'll sustain it.

25 CROSS-EXAMINATION BY

AK-REPORTING, INC.  
COURT STENOGRAPHERS  
TR 8-2448

RICHARD S. DOWNEY  
RICHARD C. O'CONNELL

1  
2 MR. GREEN:

3 Q Had you used a turnbuckle, would you  
4 have had a gradual unscrewing of the 36 inches, is  
5 that right?

6 A Yes.

7 Q And the lashing would have gradually  
8 spread apart, is that correct?

9 A Yes.

10 Q And if it were going to move, it would  
11 move gradually, is that correct?

12 A That's right.

13 Q And the distance between the pipes  
14 nearest the rail or the bullwalk was 18 inches, is  
15 that correct?

16 A Yes.

17 Q So, if you gradually turned the turn-  
18 buckle, the lashing would have allowed for the gradual  
19 spreading of the pipes until the bullwalk would not  
20 allow the pipes to move any further, is that correct?

21 A You are talking about if I had, but I did not  
22 do this.

23 Q Sir, I'm asking you a question, isn't  
24 that correct?

25 A That's right.

1  
2 Q And today, you're coming in and telling  
3 us that you did not have the time to do it that way,  
4 is that correct?

5 A That's right.

6 Q Now, you worked as a carpenter and as  
7 a lasher prior to the accident, is that correct?

8 A That's right.

9 Q By the way, there was nothing impeding  
10 your view of the deck alongside of the pipe nearest  
11 the rail, was there?

12 A You mean so that I could see all the way down?

13 Q Yes, right alongside that pipe.

14 A No, I could not see alongside, I could not  
15 see the uppermost side.

16 Q If you looked down on the deck, couldn't  
17 you see alongside of the pipe?

18 A If I got on all fours, I could see under the  
19 pipe.

20 THE COURT: What he's asking you  
21 is, was there a space between the last  
22 pipe near the railing and the rail?

23 THE WITNESS: There was 18 inches.

24 THE COURT: Now, could you see  
25 down that 18 inches; in that 18 inches,

could you see down the length of the  
pipe?

THE WITNESS: Yes.

THE COURT: Thank you.

CROSS-EXAMINATION BY

MR. GREEN:

Q And you could see that there was nothing  
alongside the pipes, is that correct?

A From what I could see, no.

Q You saw that, didn't you?

A From what I could see, I could not see anything.  
I did not take notice.

Q But, you saw there was nothing, is that  
correct?

A Yes, I saw nothing.

Q Had you, as a carpenter, ever braced  
and chocked cargo yourself?

A Yes.

MR. BUSHLOW: Is this prior to  
the accident?

MR. GREEN: Prior to the accident,  
of course.

THE WITNESS: Prior to the  
accident, I was a lasher.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Were you ever a carpenter prior to the accident?

A Yes.

Q You did both, didn't you?

A Right.

Q No question about that, is there?

A No.

Q Okay.

Prior to the accident, you chocked and secured cargos, is that correct?

A Right.

Q And if you felt that this pipe needed some chocking or securing, you could have done that, is that correct?

MR. BUSHLOW: Objection, Your Honor. I object to this line of questioning. This man's duties, at the time of the accident, was as an unlasher.

MR. GREEN: I object to Mr. Bushlow's statement, suggesting to the client what he should testify to.

MR. BUSHLOW: I am now suggesting anything, Your Honor.

THE COURT: I think that a lawyer

1  
2 has the latitude, in a cross-examination,  
3 to ask such a question, Mr. Bushlow.

4 MR. GREEN: Now, I can't ask it  
5 because of the nature of Mr. Bushlow's  
6 objection, Your Honor.

7 THE COURT: Very well, you may  
8 proceed, Mr. Green.

9 MR. GREEN: If I may have a few  
10 seconds, I can consult with my notes  
11 and maybe I'll be through.

12 THE COURT: Sure, go ahead.

13 CROSS-EXAMINATION BY

14 MR. GREEN:

15 Q How long have you been working on  
16 the waterfront, since what age?

17 A 21.

18 Q And other members of your family were  
19 in the same trade, is that correct?

20 MR. BUSHLOW: Objection, Your  
21 Honor. It is completely immaterial  
22 and irrelevant.

23 THE COURT: Objection sustained.

24 Q Have you, yourself, ever secured any  
25 round cargo on vessels?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Yes.

Q Did you, yourself, use chocking to do that?

A That's right.

Q Always?

A Just about, just about.

Q You mean sometimes, not always, is that correct?

A Yes.

Q Let me ask you this, were you asked these questions and did you give these answers at your examination before trial?

MR. BUSHLOW: What page?

MR. GREEN: Page 22.

"QUESTION: Did you ever secure any round cargo on other vessels' decks?

ANSWER: Yes.

QUESTION: Did you use chocking when you did that?

ANSWER: Sometimes."

Q Did you give those answers to those questions?

A Yes.

Q Were they truthful?

A Yes.

Q Now, when you came to this cargo and you knew that you were going to unleash it and when you saw that there was no chocking alongside of it, did you, yourself, use any chocking or ask for any chocking?

MR. BUSHLOW: Your Honor, I object to the question. It is assuming facts that are not in evidence.

THE COURT: I will have to sustain that. He testified that he did not see if there was any chocking.

Q Didn't you tell us that you looked down alongside the pipe?

A I looked down the length of the four pipes, yes.

Q And the ones that were on the deck?

A Yes.

Q And you saw nothing there?

A No.

Q In other words, there was piping there and then the deck and you saw no chocking, is that correct?

A Yes.

Q Now, I am asking you this question: Not seeing any chocking, and if you felt that there should

1  
2 be chocking there, could you have chocked it yourself,  
3 as a carpenter?

4 MR. BUSHLOW: Objection, Your  
5 Honor. This question is argumentative.

6 THE COURT: Rephrase your  
7 question. You can ask the question in  
8 a different way.

9 Q Did you chock the pipe yourself before  
10 you did the unlashing?

11 A No.

12 Q Did you ask anyone to chock the pipe  
13 before you did the unlashing?

14 A No.

15 Q Did you try to use the turnbuckle to  
16 unloosen the lashing?

17 A No.

18 Q Was the middle wire unlashed before you  
19 unlashed your lashing?

20 A I don't understand, what lashing are you talking  
21 about?

22 Q The middle one, you say there were three,  
23 is that correct?

24 A Yes.

25 Q Well, Mr. Anderson was on one side and

1  
2 he would have done the middle one, is that correct?

3 A No, no, no, that's wrong.

4 Q Well, where were the lashings on his  
5 side?

6 A You don't understand. There are three wires  
7 going across the pipe secured on each side.

8 Q Was one of the wires closest to your  
9 end of the pipe and one of the wires closest to the  
10 end of Mr. Anderson's end of his pipe?

11 A I don't understand what you're getting at. I  
12 don't think you understand.

13 MR. BUSHLOW: I see the picture,  
14 Your Honor. I see where Mr. Green is  
15 wrong.

16 May we just have a moment to  
17 confer, Your Honor?

18 THE COURT: Yes, you may.

19 CROSS-EXAMINATION BY

20 MR. GREEN:

21 Q Sir, was there just one continuous wire  
22 around the pipe, that is, three different wires?

23 A That's right. Three different wires around the  
24 pipe.

25 Q Did one of the wires go from the bullwalk

1

2

side of the pipe over across the pipe to the coaming  
side of the pipe?

3

4

A Yes.

5

Q Did the other wires go the same way?

6

A Yes.

7

Q Were each one of those pipes 20 feet

8

in length?

9

A I believe so.

10

Q And they ran forward and aft as they

11

were lying there, is that correct?

12

A Right.

13

Q At the time of the occurrence, were you

14

nearest to one of the ends of the pipe or were you

15

in the middle of the pipe between the one end or were

16

you at the other end of the 20 foot length of pipe?

17

A I don't remember.

18

Q I see.

19

When you first got there, were there

20

three wires going as we have indicated from the bull-

21

walk side to the coaming side?

22

A I believe so, yes.

23

Q Was one of the wires nearer to the one

24

end of the 20 foot length of pipe and was one of the

25

other wires nearest to the other end of the 20 foot

length of pipe and was one wire in the middle of the 20 foot length of pipe?

A Yes, give or take 2 or 3 feet or so.

Q At the time of the accident, you had just taken the clips off one of the lashings, is that correct?

A Yes.

Q Had the other two lashings that had been across the pipe, been unclipped?

A Are you talking about when the pipes fell?

Q At the time you say the pipes fell or rolled or whatever you want to call it, had you just had one unclipped, had one of the lashings just been unclipped?

A I believe I had unclipped two and I was working on the third lashing.

Q You, yourself, had done the clips on the other two lashings?

A I believe so, yes.

Q Now, the one that you had unclipped just at the instant this accident happened, was that nearest to the end of the pipe or was it in the middle or at the other end?

A It would be the onemore towards the end, of

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

course.

Q And the other ones that you had unclipped would be the middle one and the one at the far end away from you, is that correct?

A Yes.

Q Now, you said you unclipped two lashings, is that correct?

A Yes.

Q The one that you had just unclipped when this occurrence took place, was that nearest one end of the pipe?

A Yes.

Q The other one that you had unclipped, where was that?

A More towards the middle.

Q Was that the middle or the furthest one at the end?

A No, the middle. I told you that before.

Q So, at the instant this accident happened, the middle one was unclipped, and the one on the far end was unclipped, how about the third one, was that unclipped?

A I was starting to do it when it happened.

MR. BUSHLOW: If Your Honor please,

I think Mr. Green is confused and I think Mr. Green is confusing the witness.

He had two fully unclipped and he was working on the third and he was unscrewing one nut of the third lashing when the incident occurred.

MR. GREEN: Oh, I see. Is that Mr. Marchese's testimony, also?

THE WITNESS: I believe so.

Q You had unclipped two and there was a third one that you were unclipping, that is you were in the process of unclipping it when the accident occurred?

A I was starting to do it, yes.

Q And you had completely unclipped the other two before this incident occurred, is that what you are telling us, or I should say, is that what Mr. Bushlow has told us?

MR. BUSHLOW: That's what Mr. Marchese told us, Mr. Green and you didn't quite understand him.

Q What's the answer, Mr. Marchese?

A You got me confused. I guess so, I guess so.

Q Take your time, I don't want you to rush.

1  
2 THE COURT: Well, you said you  
3 guess so, is that your testimony?

4 THE WITNESS: That's my testimony,  
5 yes.

6 Q So, before you went to unclip the third  
7 one, there had already been two unclipped, is that  
8 correct?

9 A That's right.

10 MR. GREEN: I have no further  
11 questions.

12 THE COURT: I am confused.

13 How high was this rail?

14 THE WITNESS: About to here,  
15 Your Honor.

16 THE COURT: Did it run straight  
17 up and down?

18 THE WITNESS: I don't know.

19 THE COURT: Did it have a wooden  
20 top on the rail?

21 THE WITNESS: No, it was metal.

22 THE COURT: Was it solid or open?

23 THE WITNESS: I believe it was  
24 solid.

25 THE COURT: A solid piece of steel?

1  
2 THE WITNESS: Yes.

3 THE COURT: Were there any openings  
4 down at the deck?

5 THE WITNESS: I don't know.

6 THE COURT: Now, this was number  
7 5 hatch, is that correct?

8 THE WITNESS: That's right.

9 THE COURT: Now, these wires you  
10 talk about, what were they attached to,  
11 if anything?

12 THE WITNESS. I believe the wires  
13 were connected to a turnbuckle and the  
14 turnbuckle was connected to a pad-eye.

15 THE COURT: And the pad-eye was  
16 on the deck?

17 THE WITNESS: Yes.

18 THE COURT: Where was the clip?

19 THE WITNESS: Right up above the  
20 turnbuckle, in other words, the wire  
21 goes through the turnbuckle.

22 THE COURT: I see.

23 Now, when you started on the  
24 first clip, where did that wire lead, did  
25 it lead through the pipe or over the pipe

or where?

THE WITNESS: Over the pipe.

THE COURT: Over the pipe, across the width of the ship or the length of the ship?

THE WITNESS: The width.

THE COURT: The width of the ship?

THE WITNESS: Right.

THE COURT: Were these pipes lying on the deck fore and aft?

THE WITNESS: Yes.

THE COURT: Now, were there three wires and four pipes?

THE WITNESS: Yes.

THE COURT: So, one pipe did not have a wire, is that correct?

THE WITNESS: No, they were in a package like, a pyramid design, three on the bottom and one on top.

THE COURT: The wires went over the top of all of them?

THE WITNESS: Right. They did just that.

THE COURT: And before you started

1  
2 to work on these wires, were they all  
3 taut, was there a strain on those wires  
4 or were they loose?

5 THE WITNESS: No, they were strung  
6 tight.

7 THE COURT: There was no slack in  
8 any of the three wires?

9 THE WITNESS: No, I don't believe  
10 so.

11 THE COURT: The fourth pipe, that  
12 was on top of the other three, is that  
13 correct?

14 THE WITNESS: Yes.

15 THE COURT: Did that fourth pipe  
16 ever hit the deck or touch the deck?

17 THE WITNESS: I don't know.

18 THE COURT: Well, I understood  
19 you before to say that at the time the  
20 pipes fell, that it did touch the deck?

21 THE WITNESS: What I meant to say,  
22 is that the one was starting to slide  
23 in between the other pipes, that's what  
24 I meant to say. I'm sorry if you mis-  
25 understood me.

THE COURT: I see. Well, now I have a better idea of what happened.

MR. GREEN: Your Honor, may I continue with my cross-examination just for one moment more?

THE COURT: Yes.

CROSS-EXAMINATION BY

MR. GREEN:

Q Sir, I'm going to use these three pencils, if I can, and the three pencils would denote the three pipes, and that would be the bottom layer, do you understand what I'm doing?

A Yes.

Q And then the fourth pipe rested on top of the pipes like this, is that correct?

A That's right.

Q And there was a groove between the pipes near the railing and there was a path alongside of it, is that correct?

A What groove are you talking about?

Q Well, the pipes are cylindrical in shape, is that correct?

A That's right.

Q And when they come together, they form

1  
2 some kind of hollow, is that correct?

3 A Right.

4 Q So, if the Court pleases, with the  
5 pencils that I'm using, this more or less illustrates  
6 the way the pipes were laid out, is that correct?

7 A That's correct.

8 Q The top pipe was resting on top, in  
9 between the pipe nearest the rail and the middle pipe,  
10 is that correct?

11 A Yes.

12 Q So, when you unclipped the last clip of  
13 the third lashing, you --

14 MR. BUSHLOW: I object, Your Honor.  
15 There has been no testimony that he  
16 unclipped the last clip, his testimony  
17 is contradictory to what Mr. Green has  
18 just said.

19 THE WITNESS: I did not get to  
20 take off the clip of the third wire. The  
21 pipes rolled before I had an opportunity  
22 to do that.

23 Q You were in the process of unclipping?

24 A Yes.

25 Q While you were in the process, the top

1  
2 pipe started to roll down, is that correct?

3 A Yes, and it separated the other two pipes.

4 Q And was this a sudden thing?

5 A Well, it was not that fast and it was not that  
6 slow.

7 Q Had you used a turnbuckle to unloosen  
8 the lashings, any movement would have been very slow,  
9 if movement existed at all, is that correct?

10 MR. BUSHLOW: I object, as to what  
11 might have happened. We're interested  
12 in what happened.

13 THE COURT: I'll allow the  
14 question to be asked.

15 Q Had you used a turnbuckle, the movement  
16 would have been very slow, if there was any movement  
17 at all, is that correct?

18 A That's right.

19 MR. GREEN: I have no further  
20 questions.

21 THE COURT: Let me just clarify  
22 this further.

23 Now, these three wires that were  
24 lashing these pipes, one was at the  
25 forward end of the pipe, is that correct?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE WITNESS: Yes.

THE COURT: And the other one was at the aft end, is that correct?

THE WITNESS: Yes.

THE COURT: And the third one was in the middle, is that correct?

THE WITNESS: Yes.

THE COURT: Now, which lashing did you release first?

THE WITNESS: The one closest to the number 4 hatch.

THE COURT: When the pipe pinned you against the rail, which end were you standing near, the front end of the pipes or the after end of the pipes?

THE WITNESS: I don't remember, but I would say more towards the middle.

THE COURT: Now, did the pipes roll down straight or did they swing out of line?

THE WITNESS: I don't remember.

THE COURT: You don't remember?

THE WITNESS: No.

THE COURT: After you were pinned,

1  
2 what happened?

3 THE WITNESS: I was taken out of  
4 there.

5 THE COURT: By whom?

6 THE WITNESS: Oh, I don't know,  
7 I believe it was longshoremen, but I  
8 really don't know.

9 THE COURT: What was done to get  
10 you out of there, do you know?

11 THE WITNESS: No.

12 THE COURT: Did they bring down  
13 any timber or any wood or any machinery?

14 THE WITNESS: I could not tell you.  
15 I don't know.

16 THE COURT: Or was it by hand?

17 THE WITNESS: I don't know.

18 THE COURT: Were you rendered  
19 unconscious?

20 THE WITNESS: It would be more  
21 like shock.

22 THE COURT: Were you conscious or  
23 unconscious?

24 THE WITNESS: I don't know, nobody  
25 told me I was unconscious.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: How many men rescued  
you?

THE WITNESS: I don't know.

THE COURT: Did you see any of  
them getting you out?

THE WITNESS: No, not really.

THE COURT: Okay, I have no  
further questions.

MR. BUSHLOW: I have a few more.

DIRECT EXAMINATION BY

MR. BUSHLOW:

Q Mr. Marchese, you testified that as you  
were standing up against the bullwalk, you looked  
down the 20 feet of pipe and you could not see between  
the pipe and the bullwalk, is that correct?

A That's right.

Q Now, this is round pipe that we're dealing  
with, is that correct?

A That's right.

Q When you looked down, could you see  
what was underneath the pipe?

MR. GREEN: Objection, Your Honor,  
objection.

MR. GIUFFRA: I also object.

MR. GREEN: It is suggestive and leading the witness.

THE COURT: I'll allow it.

Q Mr. Marchese, isn't it a fact that the lashings on your side and that the lashings that were tied down on the rail would hold that pipe from going towards the coaming and that the lashing that was tied down on the coaming, would hold the pipe tight so as not to go up against the railing, is that correct?

MR. GREEN: Objection, Your Honor.

THE COURT: I'll sustain the objection.

MR. BUSHLOW: Just one more question, Your Honor.

DIRECT EXAMINATION BY

MR. BUSHLOW:

Q When you looked down this 20 foot stretch of pipe, could you see what was underneath that pipe?

A No, I could not.

MR. BUSHLOW: I have no further questions.

MR. GIUFFRA: Did you look?

THE WITNESS: No.

MR. GIUFFRA: You did not look

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

at all?

THE WITNESS: No.

MR. GIUFFRA: You signed and  
executed your examination before trial,  
is that correct?

THE WITNESS: Yes.

MR. GIUFFRA: It was executed before  
a Notary Public, which just so happens  
to be Mr. Bushlow, on October 17, 1972,  
is that correct?

MR. BUSHLOW: Objection, how could  
it be that day when it was taken in  
November.

THE COURT: What date should be  
on there?

MR. BUSHLOW: It should be  
November, Your Honor.

MR. GIUFFRA: We'll all agree that  
the date should be November 17, 1972.

MR. GREEN: Yes.

MR. BUSHLOW: Yes.

MR. GIUFFRA: Can we also agree  
that there was no changes made on the  
Deposition at the time that it was

1  
2 MR. BUSHLOW: Yes, I would like  
3 to call to the stand Alphonso Anderson.

4 THE COURT: Very well.

5 (Whereupon, at this time, the  
6 witness approached the witness stand.)

7 THE COURT: Do you swear the  
8 testimony you are about to give here today,  
9 will be the whole truth and nothing but  
10 the truth, so help you God?

11 THE WITNESS: Yes, I do.

12 THE COURT: State your name.

13 THE WITNESS: Alphonso Anderson.

14 THE COURT: You may proceed, Mr.

15 Bushlow.

16 DIRECT EXAMINATION BY

17 MR. BUSHLOW:

18 Q What is your address?

19 A 652 West 189th Street, Manhattan, New York City.

20 Q On August 17, 1970, what was your  
21 occupation?

22 A Lasher.

23 Q By who were you employed?

24 A C & C Lumber.

25 Q What occupation do you hold today, sir?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Lasher.

Q By whom are you employed?

A I am employed by Quinn.

Q On that day of Mr. Marchese's accident,  
what time did you report to work?

A 8 o'clock.

Q Do you remember if Mr. Marchese was with  
you?

A Yes, he was there.

Q When you went on board the vessel, what  
was the name of your snapper?

A Mitchell Ellis.

Q Where did you go first?

A Number 3 hatch.

Q What were you doing there?

A Unlashing.

Q Do you remember what you were unlashing?

A If I recollect correctly, it was vans.

Q Who was working with you at that time?

A It was a team of lashers.

Q Did there come a time when Mr. Ellis  
told you to go somewhere else?

A Yes, he did.

Q Where did he tell you to go?

1  
2 A He told me to go to number 5 hatch and give  
3 Marchese a hand. He told me the longshoremen were  
4 standing by.

5 Q What were you supposed to do in the  
6 number 5 hatch?

7 A Unlash.

8 Q Was this deck cargo that you were going  
9 to unleash?

10 A Yes.

11 Q What type of deck cargo was it?

12 A Well, in this particular part, pipes.

13 Q I show you Exhibit #1, in Evidence, is  
14 this the kind of pipe you were going to unleash in the  
15 number 5 hatch?

16 A Yes.

17 Q What side did you go to work on that  
18 morning? Did you go to work on the side nearest to  
19 the rail or the side nearest to the coaming?

20 A The side nearest to the coaming.

21 Q When you got there, how many lashes were  
22 securing this pipe onto the deck?

23 A When I got there, there was two, I think.  
24 Marchese had already released one.

25 Q Can you tell us where the other two

1  
2 lashings were, that is, where were they located on  
3 the pipe?

4 A There was the middle one still there and the  
5 aft one was still there.

6 Q Which lashing did you work on when you  
7 got there?

8 A I unlashed the one on the aft.

9 Q Did you know that Mr. Marchese had an  
10 accident that morning?

11 A Yes, I did.

12 Q Now, when he had this accident, were  
13 two wires unlashed or was one wire unlashed or were  
14 no wires unlashed?

15 A If I remember it correctly, two were unlashed  
16 and I went directly to the one over to the aft after  
17 that.

18 Q When you got to the one at the end,  
19 would you please tell the Court just what you saw  
20 with respect to the lashing and then what you did?

21 A Well, when I got there, I was told to go back  
22 and give Marchese a hand quickly because the gang was  
23 standing by.

24 MR. GREEN: I move to strike out  
25 the latter part of that witness' answer

as not being responsive.

THE COURT: I will allow it.

THE WITNESS: Now, I went to the last one and I began to unclip it and I released one clip and I was working on the second clip because most lashes usually have a second clip and just before I could release the final nut on the last clip, the top pipe came down forcing the other three pipes to roll.

Q What did you do when that happened?

A Well, I had to get up on the pipe to reach the clip when I was doing it. So when it commenced to roll, I leaped from the top of the pipe to the hatch.

Q Was the hatch open or closed?

A Closed.

Q When you released the clip and you saw the top pipe starting to settle onto the bottom pipes and to make the bottom pipes roll, in which direction did they roll?

A Both, towards the coaming and towards the railing, both ways.

Q How high were these pipes?

A I would say around 4 1/2 feet.

1  
2 Q Well, with the top pipe on top, it would  
3 make it a total of around 8 or 9 feet, is that correct?

4 A Yes.

5 Q While you were working on this nut, did  
6 you notice where Mr. Marchese was?

7 A Well, I was told that he was back in number 5,  
8 but I could not see him because of the height of the  
9 pipes.

10 Q As you were standing there and you  
11 looked down the length of the pipes, how long would  
12 you say the pipes were?

13 A About 15 to 20 feet.

14 Q As you looked down the length of those  
15 pipes, could you see underneath those pipes?

16 A No, I could not.

17 Q Do you know whether or not there was  
18 any chocking underneath those pipes before you started  
19 to unloosen those clips?

20 MR. GIUFFRÀ: I'd like to note  
21 my objections. If he said he couldn't  
22 see, how could he see if there was  
23 chocking or not.

24 MR. BUSHLOW: I did not ask him  
25 if he saw, I asked him if he knew.

THE COURT: I will allow it.

THE WITNESS: I did not know.

Q How long have you been a lasher?

A Approximately 7 1/2 years.

Q Is that all your time, what I want to know, is how long were you a lasher before 1970?

A Well, that's all my time.

Q So, before 1970, you were a lasher for 3 years, 3 years before the accident?

A Yes.

Q Had you ever had occasion to unlash such pipe upon the deck of a ship?

A Yes, I did.

Q Can you tell us what was used to secure the pipe, if you know?

MR. GREEN: Objection, on multiple grounds, Your Honor.

THE COURT: Sustained.

Q Sir, can you tell us when you realized for the first time, that the top pipe was starting to come down, what were you doing at that time?

A Well, when it first moved, I leaped to the hatch and then that's when I realized it was coming down.

MR. BUSHLOW: I have no further

questions.

MR. GIUFFRA: I have quite a few,

Your Honor.

CROSS-EXAMINATION BY

MR. GIUFFRA:

Q Mr. Anderson, when you were taking the wire off these pipes, you were doing this on the side next to the hatch, is that correct?

A Yes.

Q Now, when you arrived in the vicinity of number 5 hatch, did you see Mr. Marchese?

A I did not.

Q Did you notice how many wires had been removed from the pipes?

A As I said before, I believe it was two, I believe two had already been removed.

Q Now, when you say they were removed, were they removed on both sides?

A Yes. If I remember correctly, yes.

Q So, when you arrived at number 5 hatch, which wire or wires were still there?

A Just the aft one.

Q Do you know whether Mr. Marchese, either before the accident or at the time of the accident,

1  
2 do you know whether Mr. Marchese released the wires  
3 on the coaming side, those wires that were on the  
4 coaming side?

5 A I don't know that.

6 Q Do you know who released those wires?

7 A You mean the two before I got there?

8 Q Yes.

9 A I assume Mr. Marchese.

10 Q You assume he did it?

11 A Right, because I was up in number 3 and I was  
12 told to go back there quickly because the gang was  
13 standing by.

14 Q In other words, you assumed that Mr.  
15 Marchese had released the wires on the side next to  
16 the coaming, is that correct?

17 MR. BUSHLOW: Objection to the  
18 question. We are not dealing in assump-  
19 tions here.

20 THE WITNESS: Yes.

21 THE COURT: Take it for what it's  
22 worth.

23 Q Was anybody else assigned to the number  
24 5 hatch to remove these wires?

25 A I did not see anyone.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Just you and Mr. Marchese, I take it?

A Yes.

Q When you went back to this area, did you stand on the pipe or lean against the pipe?

MR. BUSHLOW: When?

MR. GIUFFRA: Before he started to remove the wire.

THE WITNESS: Well, when I went down there, I most likely leaned against the bottom pipes because the clips were higher than I could reach.

Q In other words, you pushed against the pipe, is that correct?

A Lightly, yes.

Q So, you did walk the length of the pipes, is that correct?

A No, I was not walking, I was standing there taking the clip off.

Q You were taking off the last wire, the aft wire, is that correct?

A Yes.

Q And the aft wire was at the aft end of the pipe, is that correct?

A Of course.

1  
2 Q Well, to get from the front of the pipe  
3 to the end of the pipe, did you walk on the pipe at all?

4 A No, I walked on the hatch.

5 Q And you walked on the hatch until you  
6 got to the end of that pipe?

7 A That's right, where the last wire was, yes.

8 Q Was this wire before you started to  
9 loosen it, was this wire tight?

10 A Yes.

11 Q In other words, there was no problem  
12 with it?

13 A Not that I could see.

14 Q Now, at this point, did you see any of  
15 the ship's officers in the area?

16 A I did not.

17 Q In other words, the only one in the  
18 area were the lashers and the longshoremen?

19 A Right.

20 Q No one from the ship was there at that  
21 time?

22 A No.

23 Q Now, when you started to loosen this  
24 last wire, did you see Mr. Marchese on the other side?

25 A I did not.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q How tall are you?

A Approximately 6'3".

Q And you were standing on the pipe itself,  
is that correct?

A Yes, the bottom pipe, yes.

Q Could you see over this top pipe and  
see down to the railing of the ship?

A Could I see over the railing?

Q Yes.

A No, I could not.

Q How big were these pipes?

A Well, they were huge.

Q When you say huge, how big?

MR. BUSHLOW: What do you mean  
by how big?

MR. GIUFFRA: Give me a diameter.

(No response.)

Q Well, looking at the photograph which  
has been marked Exhibit #1, in Evidence, could you  
approximate the diameter of the pipe?

A I don't deal in diameters that much, I just  
don't know.

THE COURT: Do you know what a  
diameter means?

1

THE WITNESS: Yes, I do.

2

3

THE COURT: He wants to know how  
big the inside of the pipe is from top  
to bottom.

4

5

6

THE WITNESS: It's large enough  
for a man to crawl through.

7

8

THE COURT: 27 inches or 30 inches  
or 40 inches, what would you say?

9

10

THE WITNESS: 30 or 35 inches,  
would be a good guess.

11

12

Q Would you say that the diameter was  
around 3 feet?

13

14

A Yes.

15

16

17

Q So, that first pipe that you were standing  
on was 3 feet off the deck of the vessel, is that  
correct?

18

A Approximately.

19

20

Q And the second pipe was on top of that,  
is that correct?

21

A Yes.

22

23

THE COURT: What was that pipe  
made out of, what kind of material?

24

THE WITNESS: It's made of steel.

25

THE COURT: Steel or concrete?

MR. GIUFFRA: I believe they  
were steel pipes, Your Honor.

THE COURT: Is that agreed upon?

MR. BUSHLOW: Yes, it is.

MR. GREEN: Yes.

MR. GIUFFRA: Yes.

THE COURT: Do you know the  
thickness of the outside of the pipe?

THE WITNESS: No, I do not.

CROSS-EXAMINATION BY

MR. GIUFFRA:

Q Now, before you started to remove this  
last wire, did you talk to Mr. Marchese?

A I did not.

Q Did you tell anyone that you were going  
to loosen the wire?

A I did not.

Q When you loosened the wire, how did  
you do that?

A With the ratchet.

Q In other words, you had one of those  
ratchet wrenches that turns and comes back again?

A Yes.

Q How long, would you say, the screw into

1  
2 the nut was, would 18 inches be correct; you heard  
3 the testimony before, didn't you?

4 A I heard the testimony, but I don't know what  
5 you're saying.

6 Q Well, how big was the bolt?

7 A The tip?

8 Q Yes.

9 A It has 3/4 inch clips.

10 Q How many nuts are securing the clips?

11 A Two nuts to each clip.

12 Q So, in other words, you started on the  
13 first nut, you were loosening that first nut, is  
14 that correct?

15 A Yes.

16 Q And at that point, did you notice any  
17 of the pipes moving?

18 A I did not.

19 Q Now, when you were standing on the pipe,  
20 did you notice any movement?

21 A No.

22 Q Nothing at all?

23 A No.

24 Q Now, when you say this top pipe started  
25 to fall down, had you removed any of those nuts from

1  
2 from the clip?

3 A I had removed one clip and removed the nut.  
4 from the second clip. You see, the wire has two clips,  
5 but four nuts.

6 Q In other words, you had two clips on  
7 your side, is that correct?

8 A Yes.

9 Q And you had taken one clip off?

10 A Yes.

11 Q And you were working on the second clip?

12 A Yes, and I had had one nut off and I was starting  
13 to release the other nut.

14 Q Now, when you started to notice that  
15 the pipe was moving, did you yell out or say anything?

16 A I really did not have any time to do that.

17 Q When did you realize that Mr. Marchese  
18 or someone else was on the other side?

19 A When it came down.

20 Q When it came down?

21 A Yes.

22 Q How about before those pipes came down?

23 A No, I did not realize it.

24 Q Up until the time that you were doing  
25 this last nut on the second clip, was the wire still

1  
2 tight?

3 A Yes.

4 Q Everything was properly secured?

5 A Yes.

6 MR. BUSHLOW: Objection to the  
7 word "properly".

8 MR. GIUFFRA: He said yes.

9 THE COURT: I'll allow it, it  
10 is a cross-examination, you know.

11 CROSS-EXAMINATION BY

12 MR. GIUFFRA:

13 Q In other words, there was no problem  
14 up to that point, is that correct?

15 A That's correct.

16 Q Now, when you released this last nut  
17 on this clip, is that when the pipes started to move?

18 A Yes.

19 Q What happened, did the wire pull out  
20 of the clip?

21 A If I remember correctly, that is exactly what  
22 happened.

23 Q In other words, this wire, did it come  
24 out very slowly or did it pull right out?

25 A To my memory, it pulled right out, but I really

1  
2 don't know, because if I would have stayed there a  
3 second later, I might have been crushed.

4 Q Did you see it starting to come out?

5 A It just happened.

6 THE COURT: What started to come  
7 out?

8 THE WITNESS: Well, from the strain  
9 on the wire that was holding the pipe and  
10 by my loosening the last nut, it just  
11 came right out.

12 THE COURT: You could see the  
13 strain that was on the wire, is that  
14 correct?

15 THE WITNESS: Yes.

16 THE COURT: Well, did you expect  
17 this to happen?

18 THE WITNESS: No, I did not, because  
19 usually when piping comes in this way,  
20 it's chocked, so I assumed it was chocked.

21 CROSS-EXAMINATION BY

22 MR. GIUFFRA:

23 Q You don't know whether or not the pipe  
24 was chocked or not because you never looked at it, is  
25 that correct?

1  
2 A Afterwards, I did.

3 Q How about before the accident?

4 A No.

5 Q Prior to the accident, you did look at  
6 the pipe though, is that correct?

7 A You mean before the accident happened?

8 Q Yes.

9 A Well, I saw the pipe, but I did not look under-  
10 neath.

11 Q Now, when this wire started to come out  
12 of the clip, was that a spontaneous movement?

13 A Yes.

14 Q Very quickly?

15 A Yes.

16 Q And, if you had not loosened that last  
17 nut, that pipe would not have moved, is that so?

18 A I imagine so, I don't know.

19 Q So, when you loosened that nut, the  
20 whole thing gave way, is that correct?

21 A Yes.

22 Q And the wire came out of the clip?

23 A Yes.

24 THE COURT: Just to get things  
25 straight, that was the third wire that

you were working on at that time when  
the accident occurred?

THE WITNESS: Yes.

Q In other words, when you approached the  
pipe, when you were told to go down to number 5 hatch,  
the first two wires, that is, the middle one and the  
end one, were already removed, is that correct?

A Yes.

Q And those wires were just loose, hanging  
there, those two wires, is that correct?

A Yes.

Q So, when you went to the third wire, the  
aft one, that wire was tight, is that correct?

A Right.

Q And as soon as you loosened that nut  
on the second clip, the wire and everything gave way,  
is that correct?

A Yes.

Q And the thing started to move?

A Yes.

MR. GIUFFRA: I have no further  
questions.

MR. GREEN: I have some questions.

CROSS-EXAMINATION BY

MR. GREEN:

Q Mr. Anderson?

A Yes.

Q Am I correct that the two wires were completely unlashed and loosened when you got there?

A Yes.

Q And when you got there, was there a third wire that was lashed around one end of the pipes over from the coaming side to the rail side?

A Yes.

Q And that was held fast or in place by two separate clips, is that correct?

A Yes.

MR. BUSHLOW: On his side only.

THE WITNESS: On my side only.

MR. GREEN: Mr. Bushlow, please!

MR. BUSHLOW: You're misquoting the evidence.

THE COURT: All right. Ask your next question Mr. Green. Let's get on with it.

Q Mr. Anderson, did one wire go over from the coaming side to the rail side?

A Yes.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Was it a single wire or were there two wires that did this?

A Just one wire.

Q Just one single wire?

A Yes.

Q And, if you had already removed one of the clips, and you were in the process of removing the second clip, is that correct?

A Yes.

Q So, the cargo would be unlashed when you finished unscrewing the second screw on the second clip, is that correct?

A Yes.

Q So, there is question about it that had you finished unscrewing this last screw, that the cargo would have been entirely unlashed, is that correct?

A Yes, I imagine so.

Q So, there would be no reason for anyone to be unclipping the cargo on the rail side of that unlashing, would there be?

A Yes, there would.

Q For what purpose?

A Because when you were told, or rather, I was

1  
2 told to go back there and give Marchese a hand.

3 Q I understand what you are telling us,  
4 but did you not just get through telling us that you  
5 were in the process of working on the third wire, and  
6 unlash the third wire that was holding the cargo?

7 A Yes.

8 Q And you were working on the second clip  
9 of the third wire, is that correct?

10 A Yes.

11 Q And you had unscrewed one of the screws  
12 of the second clip and you only had one other screw to  
13 go, before the cargo was completely unlashed, is that  
14 correct?

15 A Yes.

16 Q And, had you completed that, the cargo  
17 would have been completely unlashed, there's no  
18 question in your mind about that, is that correct?

19 A No, it would not be, because if I remember  
20 correctly, the wires had been spliced.

21 THE COURT: The wires had been  
22 spliced?

23 THE WITNESS: Yes, so, in other  
24 words, a wire, if it is not long enough  
25 to extend across the cargo that we are

securing, will be spliced to make the wire long enough, so there will be two terminals.

Q Mr. Anderson, if I understand what you are saying, you say that you make one wire out of two wires, is that correct?

A Yes.

Q But, it's still one wire when it becomes spliced, isn't it?

A Well, that depends upon how you run it.

Q So, you had two sections of wire spliced together running around this one end that was securing this pipe, is that correct?

A I believe so, yes.

Q So, whether it was two sections or one section, when you unscrewed that last screw on that last wire, that would have completely unlashed the cargo, isn't that so?

A I imagine so.

Q So, there would be no reason, according to what you're saying, for Mr. Marchese to be working on the clips of the rail side of this lashing, is that correct?

MR. BUSHLOW: Objection, Your Honor.

1  
2 It is purely speculative.

3 THE COURT: It is speculative, but  
4 I will allow it.

5 MR. GREEN: I would like an  
6 answer, Your Honor.

7 THE COURT: I think it's self-  
8 obvious, Mr. Green.

9 MR. GREEN: Okay, I'll go onto  
10 something else.

11 THE COURT: Please do.

12 CROSS-EXAMINATION BY

13 MR. GREEN:

14 Q Mr. Anderson, did you talk to anyone  
15 connected with Mr. Bushlow's office about the case  
16 for today?

17 A Well, I got a letter in the mail to come down  
18 to Mr. Bushlow's office, if that's what you mean, yes.

19 Q Had you ever met Mr. Bushlow or anybody  
20 connected with his office before you got that letter?

21 A No, not before that.

22 Q When you got this letter, you came to  
23 Mr. Bushlow's office, is that correct?

24 A Yes, I did.

25 Q When was that?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A About two months ago.

Q About two months ago?

A Yes.

Q Did you talk to him about the case?

A We discussed it, yes.

Q Did you discuss it that you might be  
testifying here today?

A Right, I was told that I might be a witness,  
yes.

Q Did you discuss the case with Mr. Bushlow  
or Mr. Marchese today?

A I never discussed the case with Mr. Marchese, no.

Q Did you discuss the case in his presence  
with Mr. Bushlow or anybody connected with Mr. Bushlow's  
office?

A No, I did not.

Q Did you come to Court here today with  
Mr. Bushlow or Mr. Marchese?

A Yes, we came down together. I was told to meet  
him at his office at 9 o'clock, which I did.

Q And between 9 o'clock and the time that  
you came to Court, did you talk about the case?

A I did not.

Q Not at all?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A No, I did not.

Q You did not talk about what testimony you were going to give?

A I did not.

Q Did you talk to Mr. Marchese about the facts of the accident?

A I did not.

Q Now, you told us that you did not look to see if there were chocks on the rail side of the pipes, is that correct?

A Yes, I was not working on the rail side.

Q Did you tell us that you did not look to see?

A I did not look.

Q Did you look to see if there were chocks on your side of the pipe?

A I did not.

Q I take it Mr. Marchese was there ahead of you, is that correct?

A Yes.

Q And if there was a situation that needed correcting, I assume that Mr. Marchese would have taken care of that before you got there, is that correct?

MR. BUSHLOW: Objection, Your Honor.

THE COURT: Sustained.

Q By the way, were these pipes resting on the deck or on a sleeper?

A If I remember it correctly, they were on a sleeper.

Q What is a sleeper?

A 2 by 4's, that's the material that they use for them.

Q How many of these sleepers were there?

A I don't remember.

Q Was there more than one?

A I assume so, but I really don't know.

Q Did the sleepers run from the coaming right up to the coaming to the rail or were they shorter?

A I don't know.

Q Now, if you bothered to look, could you see whether there was anything lying on the deck or on the sleepers parallel to the pipes?

A That's not my job.

Q I see, it's not your job to look, is that what you're telling us?

A My job was to unlash.

Q Had you looked, could you have seen --

MR. BUSHLOW: Your Honor, we don't know what he would have seen.

MR. GREEN: Your Honor, Mr. Bushlow is leading the witness. He is trying to bolloux me up from asking the right questions.

THE COURT: Next question, Mr. Green.

CROSS-EXAMINATION BY

MR. GREEN:

Q Had you looked, could you have seen --

THE COURT: Had you had looked where, Mr. Green?

MR. GREEN: Alongside the pipe.

THE COURT: Continue.

Q Had you looked alongside the pipe, could you have seen whether or not there was any chocking there?

A No, you could not see, you could not see.

Q How about if you got down on your knees, could you see?

A No.

Q Now, are you telling us that if you stood back and looked at these pipes, you could not see?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A No.

Q You could not see to see if there was any chocking?

A No.

Q Where the pipes met the sleeper, you could not see?

A I could not, no.

Q Now, there were turnbuckles, is that correct?

A Yes.

Q Did you hear Mr. Marchese testify as to the dimensions of the turnbuckles?

A Yes.

Q About 18 inches?

A Yes.

Q So, when you unscrew them, they unscrew about 36 inches, is that correct?

A Yes.

Q And there was a turnbuckle on this lashing that you were working on, is that correct?

A Yes.

Q Where was that?

A It was in the pad-eye on the deck.

Q Did you see it when you got there?

1  
2 A Sure, I saw it.

3 Q Now, was this turnbuckle on the pad-eye  
4 of the deck, was this on the coaming side or on the  
5 rail side?

6 A It was on the coaming side.

7 Q On your side?

8 A Yes.

9 Q Did you or Mr. Marchese try to unleash  
10 that lashing by turning the turnbuckle?

11 MR. BUSHLOW: Objection. Mr.  
12 Anderson testified that he did not  
13 see Mr. Marchese. How could he know  
14 what he did, Your Honor.

15 Q As far as you know, and as far as you  
16 saw with your own eyes, did you or Mr. Marchese, at  
17 any time, attempt to unleash this lashing that we are  
18 talking about by turning the turnbuckle?

19 A Well, I did not because I was told to go back  
20 there and release the wire quickly.

21 MR. GREEN: Your Honor, I move  
22 to strike out the latter part of that  
23 answer as not responsive.

24 THE COURT: I will allow it to  
25 stand.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q How much longer would it have taken you to turn the turnbuckles to unlash the cargo as opposed to the way you did it?

A I have no idea, but it would take more time to unscrew the turnbuckles than to do it with the ratchet.

Q How much more time?

A Maybe 5 minutes.

Q 5 minutes?

A Possibly.

Q So, are you telling us that the reason that you did not use the turnbuckles is because you tried to save 5 minutes, is that correct?

A I am telling you that the reason that I did not use the turnbuckles is because I was told to go about it quickly because the gang was standing by waiting.

Q So, it would have taken 5 minutes more to do it with the turnbuckles, is that correct?

MR. BUSHLOW: For Pete's sake, he's answered that five times.

THE WITNESS: Yes.

Q How would you go about unscrewing the turnbuckles?

A Well, you would insert the tool into the turn-

1  
2 buckle and start to unwind it.

3 Q And you would just keep on twisting and  
4 twisting, is that correct?

5 A Untwisting, yes.

6 Q Well, the way you were doing it, you  
7 had to unscrew 4 screws, is that correct?

8 A Yes.

9 Q And you had to insert something in the  
10 4 screws to unscrew them, is that correct?

11 A A ratchet, yes.

12 Q How long were each one of those screws?

13 A Approximately, 6 or 8 inches.

14 Q So, you had to unscrew approximately  
15 24 or 32 inches worth of screw, is that correct?

16 A Yes, but it was faster than using the turnbuckles.

17 THE COURT: Before you continue,  
18 I have a question.

19 There has been some mention of  
20 a stiffner, what role would the stiffners  
21 play in this picture, if at all?

22 THE WITNESS: Could you clarify  
23 that, Judge?

24 THE COURT: All right. If you  
25 don't about it, you don't know.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE WITNESS: Not really, Judge.

THE COURT: Did you have anything to do with the rescuing of Mr. Marchese?

THE WITNESS: No, I did not.

THE COURT: When was the first time that you became aware that Mr. Marchese was hurt?

THE WITNESS: After I leaped to the hatch and I turned to look at the pipe and I saw that he was pinned.

THE COURT: What did you do?

THE WITNESS: I ran to get the foreman.

THE COURT: You did not run to Mr. Marchese and try to help him?

THE WITNESS: No, I did not.

THE COURT: Have you ever handled pipes, have you ever unlashed pipes on ships before of this type?

THE WITNESS: I have unlashed pipes on decks, yes, I have.

THE COURT: Did you ever find that chocks got loose?

THE WITNESS: No.

1  
2 THE COURT: Every time you ever  
3 handled pipes on a ship, the chocks were  
4 always in place?

5 THE WITNESS: Yes, they were.

6 THE COURT: Never any missing?

7 THE WITNESS: No.

8 THE COURT: All right. I have  
9 no further questions, at this time.

10 MR. GREEN: I have no further  
11 questions, Your Honor.

12 MR. BUSHLOW: Just one or two  
13 more, Your Honor.

14 DIRECT EXAMINATION BY

15 MR. BUSHLOW:

16 Q Mr. Anderson, when you unloosened this  
17 wire, or were in the process of unloosening this wire,  
18 did you assume that there were chocks underneath the  
19 pipes to keep them from sliding?

20 MR. GREEN: Objection, Your Honor.

21 THE COURT: What is the basis  
22 of your objection?

23 MR. GREEN: Leading and suggestive.

24 MR. GIUFFRA: Also speculative,  
25 Your Honor.

THE COURT: I will allow it.

THE WITNESS: Yes, I did assume  
that there was chocks under there.

MR. BUSHLOW: I have no further  
questions.

MR. GREEN: I just have a couple  
more.

CROSS-EXAMINATION BY

MR. GREEN:

Q Mr. Anderson, the turnbuckle that was  
on the last lashing that you were working on, that  
was on the pad-eye on the coaming side, is that  
correct?

A Yes.

Q And that pad-eye was welded into the  
deck, is that correct?

A Yes.

Q If you had used a turnbuckle, you would  
not have had to climb up on the pipe, is that so?

A That's correct.

Q Sir, if you used a turnbuckle, you would  
have gradually loosened the lashing, isn't that so?

A You can loosen it that way, but it would have  
taken more time.

1  
2 THE COURT: Would it have released  
3 the lashing more slowly?

4 THE WITNESS: Yes, it would have.

5 Q Also, you would not have had to climb  
6 on top of the pipe, isn't that correct?

7 A Yes.

8 THE COURT: If the strain was  
9 released and there was no chocking, the  
10 pipes would start to roll, and you would  
11 have been able to see that, if you had  
12 been using the turnbuckle, is that correct?

13 THE WITNESS: Yes.

14 THE COURT: Now, you assumed that  
15 there were chocks there, is that correct?

16 THE WITNESS: Yes.

17 THE COURT: If you had known that  
18 there were not chocks there, would you  
19 have done the work in the same manner?

20 THE WITNESS: I believe, I would  
21 have.

22 THE COURT: You would have taken  
23 the nuts off and let the pipes roll?

24 THE WITNESS: Right, I would have  
25 figured that the pipes would have stayed

there, though.

THE COURT: Even though there were  
no chocks there?

THE WITNESS: Yes.

THE COURT: No further questions.

MR. BUSHLOW: I have a few more.

DIRECT EXAMINATION BY

MR. BUSHLOW:

Q Mr. Anderson, there was a turnbuckle  
on your side between the coaming and the pipes, is  
that correct?

A Yes.

Q Was there a turnbuckle on the side  
between the railing and the pipes, also?

MR. GREEN: Objection, Your Honor.  
He testified that he did not look on that  
side.

THE WITNESS: Excuse me, Your  
Honor. A question was asked of me a  
few minutes ago, that if the pipe was  
chocked, would I have done it the same  
way, or did he ask me, if the pipe was  
not chocked, would I have done it the  
same way?

1  
2 THE COURT: He asked you if the  
3 pipe was not chocked, would you have  
4 done it in the same way?

5 THE WITNESS: If I would have  
6 known that it was not chocked, I would  
7 have not released the wire.

8 THE COURT: You would not have  
9 done the work in the same manner?

10 THE WITNESS: That's correct,  
11 Your Honor. I would not have done it  
12 in the same manner.

13 THE COURT: Thank you. That  
14 clarifies your previous statement.

15 MR. GIUFFRA: Tell us what you  
16 would have done?

17 THE WITNESS: Well, if I had  
18 known that it was not chocked and being  
19 that it was pipe, I would have reported  
20 it to my foreman.

21 MR. GIUFFRA: Well, would you  
22 have released the pipe using the turnbuckle  
23 instead?

24 THE WITNESS: I would have reported  
25 it to my foreman and would have waited

1  
2 for him to tell me what to do, if there  
3 were no chocks there.

4 MR. GIUFFRA: Would it be the  
5 snapper's responsibility to make sure  
6 there was chocking there?

7 THE WITNESS: No, it is not.

8 MR. GIUFFRA: I have quite a few  
9 more questions, Your Honor. Do you mind  
10 if I continue?

11 THE COURT: Go ahead.

12 CROSS-EXAMINATION BY

13 MR. GIUFFRA:

14 Q How many times have you lashed similar  
15 cargo?

16 MR. BUSHLOW: Lashed or unlashed?

17 MR. GIUFFRA: Both.

18 THE WITNESS: Quite a few times.

19 Q How many times?

20 A I don't know.

21 Q When you say, quite a few times, what  
22 would the number be?

23 A I have no idea.

24 Q The same type of pipes?

25 A No, different pipes.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Well, what about the same type of pipes, have you ever unlashed this type of pipe before?

A I really don't remember.

Q Would you say this was the first time you ever unlashed this type of pipe before?

A I don't remember, I can't remember.

Q In other words, you may or you may not have done that, is that correct?

A That's right, because there's so much pipe coming in.

Q This may have been the first time that you have done it, is this correct?

A This particular type of pipe?

Q Yes.

A It could be, yes.

Q And this type of pipe was much longer than the normal type of pipe, is that correct?

A Yes.

Q In other words, in comparison with the other pipe, that you've usually seen, this pipe is much longer, is that correct?

A Yes, this particular pipe, yes.

Q Now, talking about the turnbuckles, when you loosen a turnbuckle, what is the length of the

1  
2 screw on the turnbuckle?

3 MR. BUSHLOW: He did not do that.

4 MR. GIUFFRA: If he did do that,  
5 what would be the amount that he would  
6 unloosen, that's my question.

7 THE WITNESS: 36 inches.

8 Q And that would not have taken much longer  
9 to unloosen, is that correct?

10 A It would have taken me longer.

11 Q How much longer?

12 A Around 5 minutes.

13 MR. GIUFFRA: I have no further  
14 questions.

15 MR. BUSHLOW: I have no further  
16 questions.

17 MR. GREEN: I have no further  
18 questions, Your Honor.

19 THE COURT: You maybe excused.

20 (Whereupon, the witness left  
21 the witness stand.)

22 THE COURT: Do you have another  
23 witness, Mr. Bushlow?

24 MR. BUSHLOW: Yes, I do, Your  
25 Honor.

1  
2 THE COURT: Will the witness please  
3 step forward?

4 (Whereupon, at this time, the  
5 witness assumed a position on the witness  
6 stand.)

7 THE COURT: Do you swear that the  
8 testimony you're about to give here today,  
9 will be the whole truth, nothing but  
10 the truth, so help you God?

11 THE WITNESS: Yes, I do.

12 THE COURT: What is your name?

13 THE WITNESS: Nicholas Martino.

14 DIRECT EXAMINATION BY

15 MR. BUSHLOW:

16 Q What is your address?

17 A 178 Gower Street, Staten Island, New York.

18 Q What is your age?

19 A 40.

20 Q Mr. Martino, are you personally acquainted  
21 with John Marchese, the Plaintiff in this action?

22 A Yes.

23 Q How long have you know him?

24 A About 7 or 8 years.

25 Q Are you also acquainted with Mr. Anderson,

1  
2 one of the witnesses who has testified here today?

3 A Yes.

4 Q What is your occupation, sir?

5 A Carpenter.

6 Q How long have you been a carpenter?

7 A 23 years.

8 Q A marine carpenter?

9 A Yes.

10 Q By whom are you employed now?

11 A C & C Lumber.

12 Q On August 17, 1970, by whom were you  
13 employed?

14 A C & C Lumber.

15 Q What was your position with C & C Lumber  
16 at that time?

17 A I was a snapper and a carpenter.

18 Q By snapper, what do you mean?

19 A He is the foreman of the ship, the assistant  
20 foreman.

21 Q How old were you when you started working  
22 as a carpenter on board ship?

23 A 17.

24 Q Have you worked continuously so until  
25 the present time?

1  
2 A Up until the last two years, yes.

3 Q What have you been doing the last two  
4 years?

5 A I got hurt on a job.

6 Q And you are not working at the present  
7 time?

8 A No.

9 Q Up until the last two years, you have  
10 continuously worked as a carpenter or a snapper, is  
11 that correct?

12 A Yes.

13 Q Mr. Martino, I show you Exhibit #1,  
14 in Evidence, and ask you if you recognize this kind  
15 of cargo?

16 A That's pipe.

17 Q During the course of your employment, sir,  
18 have you been called upon to stow such pipe upon the  
19 deck of a ship?

20 A No, not to stow it.

21 Q To secure it?

22 A Yes.

23 Q The stowing is done by the longshoremen,  
24 is that correct?

25 A Yes.

1  
2 Q Would you please tell the Court the  
3 manner in which pipe of this kind is secured on the  
4 deck of a ship?

5 MR. GREEN: Objection, Your Honor.

6 THE COURT: I'll take it for  
7 what it's worth.

8 The Second Circuit has ruled on  
9 this with respect to a dispute on a  
10 question as to what an expert is. I  
11 remember because I used to get into a  
12 lot of lengthy discussions about this  
13 and now it has all been cut away. It  
14 is an issue of fact for the trier of  
15 the fact to determine how good the  
16 question is and how good the answer is  
17 and you have to look at all sides of it,  
18 so I will allow it.

19 MR. GREEN: I would also like to  
20 note objection for the record. I do  
21 not concede that this man's qualifications  
22 make him an expert.

23 MR. GIUFFRA: That's my objections  
24 also, Your Honor.

25 THE COURT: Well, I see that he

1  
2 has had 23 years experience in the business.  
3 Let's hear what he has to say. I will  
4 allow questions to be put to him in  
5 that capacity as an expert. The fact  
6 that the Court of Appeals says, when the  
7 master takes testimony, listen to the  
8 objection and that the evidence in the  
9 District Court of Appeals can be ruled on.  
10 They have even told judges that if there  
11 is any doubt about the testimony, that  
12 the Court of Appeals will rule on it as  
13 a matter of Law, so we will do it that  
14 way.

15 MR. BUSHLOW: Thank you, Your  
16 Honor.

17 THE COURT: Reporter, read back  
18 the pending question.

19 (Whereupon, the reporter read  
20 back the pending question.)

21 THE COURT: Of course, I will  
22 point out that merely because it is done  
23 in a certain way, does not establish  
24 that it is a proper and safe way to do it.

25 MR. BUSHLOW: That is question of

fact, Your Honor, and I am asking this witness in the customary method of doing it.

THE COURT: Well, the Second Circuit has repeatedly said this, especially when Lerner Hand was there that merely because hundreds of people do it this way, does not establish that it is the right way to do it.

MR. BUSHLOW: Well, Your Honor, it becomes a question of fact which I will leave to Your Honor to decide.

THE COURT: Okay, go ahead.

Q Do you have the question in your mind?

A Yes.

Q Can you answer it?

A Well, the procedure is this: when there is pipe to be loaded and not only this type of pipe, but any kind of pipe, the stevedore or the ship's representative comes over to the carpenter foreman or the snapper and explains or tells him that they're going to load pipes and he usually gives him the length of the pipe and the width of the pipe and how many pipes there will be loaded.

Now, the procedure is, is that you take sleepers, 4 by 4's or 4 by 6 sleepers and lay them on both sides, but that depends upon the length of the pipe. You lay so many sleepers down on the deck depending upon the length of the pipe. Now, you have to have stanchions, uprights they're called, and on each sleeper, an upright is put up, and these uprights, the height of these uprights, are based upon the height of the pipe that is going to be secured. For instance, if the pipe is going to be 10 feet high, they'll make sure that the uprights are 11 feet high. In other words, the uprights should always be above the piping. Now, for each area, where piping is going to be stored, that is, shipped, they put two or three or four and even five bases on the uprights and these uprights are tied together by 2 by 4's. Now, when the pipes are loaded, they're lashed and after that, a carpenter goes back and if there are any spaces from the upright and pipe because they were lashed, the carpenter will even cut wedges and wedge them in between the pipe and the uprights, but this is only after the piping is lashed, because sometimes it has a tendency for the stanchions to come loose, therefore, the carpenter will put wedges in between.

Q Well, assuming, for the time being, Mr. Martino, that there are three pipes about 20 feet long and around 4 to 4 1/2 feet in diameter, lying on the deck on sleepers and there is one pipe with the same dimensions, lying on top of the three other pipes and there are three lashing wires holding these pipes secure, there is one at one end, one at the middle and one at the other end, and there is no crib and no stanchion, do you follow me so far?

A Yes.

Q To add to that, the lasher is told to unlash these pipes, and the lasher unlashes wire number one, unlashes wire number two and while working on wire number three, the top pipe falls between the two pipes, that is, spreading the pipes out and injuring the lasher between the rail and the pipes, do you follow me so far?

A Yes.

Q Keeping that in mind, I ask you whether if chocks were placed underneath these pipes, would that have occurred?

MR. GREEN: Objection, Your Honor.

THE WITNESS: Can I say something?

MR. BUSHLOW: Yes, go ahead.

1  
2 THE COURT: What is the basis  
3 of your objection?

4 MR. GREEN: He is, by this  
5 witness, trying to usurp your function,  
6 Your Honor.

7 MR. BUSHLOW: He is an expert, and  
8 an expert witness is entitled to come  
9 to a conclusion.

10 THE COURT: Nevertheless, I will  
11 allow it, Mr. Green.

12 MR. GREEN: I think the witness  
13 has indicated he would like to say  
14 something.

15 THE WITNESS: Well, if there  
16 were chocks, the pipe would never have  
17 moved, but can I say something else?

18 MR. BUSHLOW: Yes.

19 THE WITNESS: When the pipes were  
20 loaded, there had to be chocks there to  
21 support the pipes, in other words, those  
22 pipes would have been rolling around all  
23 the time because there would have been  
24 no way to control them unless there were  
25 chocks there.

1  
2 MR. GREEN: I object to the  
3 witness' testimony as being a conclusion  
4 on his part and speculative.

5 THE COURT: Take it for what it's  
6 worth.

7 DIRECT EXAMINATION BY

8 MR. BUSHLOW:

9 Q Is it fair to say that as a snapper and  
10 as an assistant foreman for 20 or 23 years, is it fair  
11 to say that the obligation of the lasher to ascertain  
12 first, whether or not, there are any chocks in the  
13 situation which has been described to you here today?

14 MR. GREEN: Your Honor, I object,  
15 Your Honor. We apparently do not need  
16 a trier of the facts because the witness  
17 is now testifying to the ultimate question.

18 THE COURT: That's a very broad  
19 question, Mr. Bushlow. I will let your  
20 witness answer the question, but it is  
21 going to open up the door for a terrific  
22 amount of cross-examination.

23 MR. BUSHLOW: I'll withdraw that  
24 question and ask him another question.

25 THE COURT: Yes, please do.

1  
2 DIRECT EXAMINATION BY

3 MR. BUSHLOW:

4 Q Sir, when lashers are sent to unleash  
5 cargo of the type describe to you, they are told to  
6 do the job fast because there is a longshore gang  
7 waiting to commence operations, would it be proper for  
8 them to unleash by using the clips or by using the  
9 turnbuckles?

10 MR. GIUFFRA: I object, Your Honor.

11 MR. GREEN: Objection, Your Honor.

12 THE COURT: Again, it opens the  
13 door for a lot of cross-examination, but  
14 I will allow the witness to answer it.

15 THE WITNESS: Well, the reason  
16 that they get these hurry-up jobs, is  
17 that the longshoremen are standing by  
18 and there is a lot of money involved,  
19 and sometimes, I would give orders to  
20 my own crew to hurry up because the  
21 longshoremen are waiting, so I can  
22 understand the predicament.

23 MR. GREEN: I move to strike that  
24 answer as not being responsive to the  
25 question.

THE COURT: I'll allow it.

Q When the lasher is sent to do a particular job, and this particular job would be to unleash cargo of this caliber as illustrated in Exhibit #1, in Evidence, has he a right to assume that the cargo is in said condition to be unleashed?

MR. GIUFFRA: Note my objections.

MR. GREEN: Objection, Your Honor.

THE COURT: It's all sustained as to form.

"Has he a right", Mr. Bushlow, rephrase it, please.

MR. BUSHLOW: I'll change it to "can he assume".

MR. GIUFFRA: I will also object to that.

MR. GREEN: Note my objections, also.

THE COURT: That's just as bad, rephrase it, Mr. Bushlow.

Q What is your opinion as to the condition of cargo when lashers are sent down to unleash the cargo?

MR. GREEN: Objection, Your Honor.

1  
2 MR. GIUFFRA: I would also like  
3 to have my objections noted as to form,  
4 also, it is speculative.

5 THE COURT: Well, I will allow it  
6 and reserve decision until I file my  
7 report.

8 MR. GREEN: If Your Honor pleases,  
9 may we go off the record for a second?

10 THE COURT: Yes.

11 (Whereupon, an off the record  
12 discussion was held.)

13 DIRECT EXAMINATION BY

14 MR. LUSHLOW:

15 Q What is your opinion as to that last  
16 question, sir?

17 A Well, with respect to the last question asked  
18 me, when a lasher or a carpenter goes to the job and  
19 if he feels that it's unsafe, he will then call his  
20 boss and tell his boss that it is not safe to do the  
21 job. But, most of the time, in my opinion, when pipe  
22 comes in, I would assume that it was chocked, because  
23 it had to be chocked when they loaded the pipe onto the  
24 ship, or otherwise, when they went to unload the pipe,  
25 the pipe, without the chocking, would have been against

1  
2 the coaming and against the side.

3 THE COURT: Why do you say that?

4 THE WITNESS: Well, the way the  
5 pipe would have rolled when they put  
6 that pipe on top.

7 THE COURT: Are you talking about  
8 what would have happened when the ship  
9 was at sea?

10 THE WITNESS: I'm saying, when  
11 they loaded the pipe originally, in other  
12 words, if there was no chocking underneath  
13 the pipe, they would have spread it out  
14 originally when they first loaded it  
15 and it would have been against the coaming.

16 THE COURT: Let me see if I'm  
17 getting this straight. Are you saying  
18 that there would have had to have been  
19 chocking in order for them to load the  
20 pipes one on top of the other three?

21 THE WITNESS: Yes, that's correct.

22 MR. BUSHLOW: With that answer,  
23 I have no further questions, Your Honor.

24 THE COURT: Do you know where this  
25 ship was loaded?

THE WITNESS: No, I do not.

MR. BUSHLOW: We have a stipulation,  
Your Honor, that this ship originally  
located in Brazil.

MR. GIUFFRA: I have a few questions,  
Your Honor.

CROSS-EXAMINATION BY

MR. GIUFFRA:

Q Did you hear Mr. Marchese testify here  
this morning?

A Yes, I did.

Q Did you hear him testify that all the  
pipes were properly secured when he started to remove  
the clips?

A Well, word for word, what he said, I don't  
remember, but I heard him testify here, if that's what  
you mean.

Q Did you hear him testify that the wires  
were all tight?

A Yes, I heard him say something about the wires  
being tight.

Q What would that indicate to you?

A Well, that would indicate that there had to be  
some chocking there originally when the pipe was loaded.

1  
2 Q Could it also mean accordingly that the  
3 pipe was properly secured during the whole voyage?

4 A In my opinion?

5 Q Just answer my question.

6 MR. BUSHLOW: He's trying to  
7 answer your question.

8 THE WITNESS: In my opinion, it  
9 was not properly secured because there  
10 should have been stanchions there. In  
11 other words, to protect them when they  
12 were being unloaded.

13 Q Well, we are talking about the chocking,  
14 not the stanchions. You indicated in response to His  
15 Honor's questions that chocking must have been there,  
16 is that correct?

17 A When they loaded it, yes.

18 Q And you also indicated that if the chocks  
19 were missing, that the pipes would have been all about  
20 the ship, is that correct?

21 A They would have spewed out, if there was no  
22 chocking, yes.

23 Q But, in this case, there is no evidence  
24 that the pipes were spewed out, is that correct?

25 A Right.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q And the evidence in this case, is that the pipes were all properly tight and secure, is that correct?

A Not properly secured, in my opinion. According to the picture and according to what you just said, they were not properly secured.

Q Did you hear Mr. Anderson testify this morning?

A Yes.

Q Did you hear Mr. Anderson say that the pipes were loose?

A I did not hear him say that the pipes were loose.

Q Did you hear him say that the wires were loose?

A No.

Q In fact, you heard Mr. Anderson say everything was secured until he made that last turn, isn't that so?

A As far as the lashing was concerned, I'm not competent to answer to that, but I am competent, in my mind to answer with regard to the securing of the pipes with stanchions and chocking, and in my mind, they were not properly secured.

Q But, if the pipes were not properly

1  
2 secured, you said that the pipes would have spread out  
3 in the ship, do you recall saying that?

4 A Well, what I did say, was that chocks had  
5 originally been put in under the pipes, and then they  
6 were lashed, therefore, I said that if they did not  
7 put chocks under in the beginning, that the pipes would  
8 have been spread out on the bottom of the ship.

9 Q You, also, indicated that there is a  
10 crib or some sort?

11 A Yes, there is.

12 Q Well, no one has testified, in this case,  
13 about a crib being there, is that correct?

14 A That's correct.

15 Q So, based upon what you have said, if  
16 the chocks were there and the chocks had been removed  
17 during the voyage --

18 A Not removed, they could have fallen out.

19 Q Well, from Brazil to New York, the pipes  
20 would have spread out, isn't that true?

21 A No, I said originally when they were loaded,  
22 there had to be chocks there or the pipes would have  
23 spread out, that was when they were loaded, I didn't  
24 say after they were loaded.

25 Q Suppose the chocks were there when they

1

2

were first loaded?

3

A That's the only way it could have been.

4

Q You were not present at the time they loaded the pipe, were you?

5

6

A No, but what I'm trying to tell you is that the way the pipes were situated and the way the lashing was, there had to be some kind of chocks to begin with.

8

9

Q Wouldn't a sleeper hold the pipes in place?

10

11

A No, sir, no way at all.

12

13

14

15

16

17

Q Now, assuming, based upon what you've said, assuming that the chocks were there and that the chocks fell out somewhere along the voyage between Brazil and The United States of America, what would you expect to find the condition of the pipes to be in New York?

18

19

A Well, as long as they were lashed, they would hold.

20

21

Q They would hold together?

22

A Sure, with the lashing, they would hold together.

23

24

25

Q Assume that one of the lashings released, what would happen then?

A The other two could still hold, that's why they put three lashings on.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q And if the second one was released,

would the pipes still be secure?

A It depends, if it was the middle one, it would be okay.

Q In this case, the middle one was off.

A Well, I'm telling you that if the middle wire was on, in my mind, it still might hold.

Q Well, in this case, the testimony is that the forward wire was removed and the middle wire was removed and Mr. Anderson was in process and Mr. Marchese was in process of removing the third wire.

A That's correct.

Q Well, based upon your experience, if the end wire was removed and the middle wire was removed, would the pipes start to move?

A That would be very hard to say because you still had that one wire on there.

Q Well, if you would start to remove that last wire, what would happen then?

A Well, if there is no chocking, it's going to go.

Q Well, what about it, where is it going to go?

A Well, it's going to go until it hits something.

Q When it hits something?

1  
2 A Yes.

3 Q Well, the testimony was that the space  
4 between the railing of the ship and the end of the  
5 pipe was about 18 inches, is that correct?

6 A If you say so, yes.

7 Q Well, if the diameter of the pipes is  
8 36 inches, don't you think that the last pipe against  
9 the stiffner would stop it from moving?

10 A You mean the railing of the ship?

11 Q Yes.

12 A Wherever it hits, it's going to hit and it's  
13 just going to start to roll. There's nothing under-  
14 neath to stop the pipes from rolling.

15 Q Do you advise your men and your crew  
16 about safe working habits?

17 A Well, my men know them, they're pretty familiar  
18 with that stuff. If they know something is not safe,  
19 they should not work on it.

20 Q Would the lashers have a duty or a  
21 responsibility to see if there were any chocks under  
22 that pipe?

23 A Could you ask that question again?

24 Q Was it not their responsibility to see  
25 whether the cargo was properly chocked?

1  
2 A Well, they might have taken it for granted that  
3 there was chocks there, seeing that the pipe was already  
4 loaded.

5 Q Was it their responsibility to see if it  
6 was chocked?

7 A Well, it would be their responsibility if they  
8 wanted to go crawling on the ground to look to see if  
9 anything is there, and a man could do that if he wants  
10 to, and he should look, but it's possible that a man  
11 could take it for granted being the way the pipe came  
12 in because there was space on each side.

13 Q Well, it would not be that difficult to  
14 look underneath the pipe, would it be?

15 A Well, I was not there; I could not say, 18  
16 inches though, is kind of tight. I really could not  
17 say.

18 Q Well, it would not have taken that long  
19 to look, would that be a fair statement to make?

20 A Well, I, myself, would have looked, to tell you  
21 the truth. I would have looked.

22 Q Do you think a lasher, who was experienced,  
23 would normally look under the pipe?

24 A I don't know what goes through their minds.

25 Q Now, if a person is an experienced lasher

1  
2 and he does not see these chocks and these other  
3 devices used to secure cargo, would that alert him to  
4 figure out that something was amiss?

5 A You are asking me about what a person thinks,  
6 how could I answer that.

7 Q Well, did you ever discuss these things  
8 with your men, in other words, did you ever tell them  
9 that if there is no chocks, you better watch out?

10 MR. BUSHLOW: He is a carpenter,  
11 he is not a lasher.

12 THE WITNESS: Well, to tell you  
13 the truth, I, personally, have never  
14 seen pipe come in like this, without  
15 stanchions. Maybe once, I saw it, but  
16 they were little, small pipes, small  
17 pipes about 8 or 9 inches, but I, personally  
18 have never seen pipes of this size, come  
19 in without stanchions.

20 Q Are you familiar with the loading  
21 techniques used in Brazil for pipe?

22 A No, I am not.

23 Q You have never been down to Brazil, have  
24 you?

25 A No.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q So, you are not familiar with the way they load cargo down there in Brazil, are you?

A No.

Q When, for the first time, did you discuss this case with either Mr. Bushlow or someone in his office?

A I think it was Thursday or Friday of last week. He called me.

Q Have you ever testified for Mr. Bushlow in any other cases?

A No.

Q Did you ever sue Moore-McCormack Lines?

A I worked for them, yes I did.

THE COURT: Did you ever sue them?

THE WITNESS: Yes.

THE COURT: How many times?

THE WITNESS: A couple of times, a couple of times.

Q Did you ever recover any money?

A Yes.

THE COURT: Was Mr. Marchese a witness for you?

THE WITNESS: No.

Q What about Mr. Anderson, was he ever a

1  
2 witness for you?

3 A No.

4 Q What did you settle the last case for,  
5 with Moore-McCormack Lines?

6 MR. BUSHLOW: Objection, Your  
7 Honor.

8 THE COURT: Sustained.

9 Q You indicated that you are on Disability,  
10 do you have a claim pending against Moore-McCormack  
11 Lines at the present time?

12 A No, I do not.

13 Q Have you ever testified as an expert  
14 before?

15 A No

16 Q This is the first time?

17 A Yes.

18 Q Did you discuss this case this morning  
19 with Mr. Bushlow or Mr. Marchese?

20 A No, I did not.

21 Q When did you discuss this case with  
22 Mr. Bushlow?

23 A Well, I discussed it with him this morning.

24 Q For how long a period of time did you  
25 discuss it?

1

2

A About 20 or 15 minutes.

3

4

Q Did Mr. Bushlow tell you the facts of the case?

5

6

7

A Roughly, he told me how Mr. Marchese got hurt and how he wanted to use me as a carpenter expert, that's all.

8

9

Q Did he tell you about the absence of any chocks?

10

11

12

A Well, no, we did not discuss anything like that. He just asked me if I was willing to testify as a carpenter expert, and I said yes.

13

14

15

Q Are you getting paid to testify?

A No, he ain't paying me to testify.

16

17

18

Q He's not paying you to testify here this morning?

A Maybe he's going to pay for my travel expenses, I guess that's about it.

19

20

Q Did he tell you that he was going to pay for your transportation expenses?

21

22

23

A No, he did not mention that.

MR. GIUFFRA: I have no further questions.

24

25

MR. GREEN: I have some.

CROSS-EXAMINATION BY

AK-REPORTING, INC.  
COURT STENOS

RICHARD S. DOWNEY  
RICHARD C. O'CONNELL

1  
2 MR. GREEN:

3 Q Are you presently a client of Mr. Bushlow?

4 A Yes, I am.

5 Q Are you suing somebody?

6 A Yes, I am.

7 MR. BUSHLOW: Your Honor, I think  
8 this entire line of questioning is  
9 entirely irrelevant. There is no  
10 connection with this case and any other  
11 cases that I am presently working on.

12 THE COURT: Sustained.

13 CROSS-EXAMINATION BY

14 MR. GREEN:

15 Q You talked about chocks, could you  
16 describe for us what you mean?

17 A A chock?

18 Q Yes, describe a chock such as you would  
19 have used for cargo such as the type of cargo that we  
20 are talking about here today.

21 A Well, a chock would be a brace.

22 Q Describe it?

23 A A brace is something that you use to hold some-  
24 thing in place with to prevent it from shifting.

25 Q Describe it for me.

1  
2 A Well, a brace is made of wood, it's usually a  
3 piece of wood, usually a 4 by 6 or bigger depending  
4 upon the type of cargo. In other words, if it's a  
5 car wheel, we use 2by4's and if it's a truck wheel,  
6 we use 4 by 6's, and if it's a tank wheel, we use  
7 6 by 8's.

8 Q Could you describe the type of brace you're  
9 saying, should have been used in this particular cargo?

10 A 4 by 6's.

11 THE COURT: How would you use the  
12 4 by 6, do you lay it flat on the deck?

13 THE WITNESS: Well, like I told  
14 you, they lay sleepers on the deck and  
15 then we make a crib.

16 THE COURT: How do you make a crib?

17 THE WITNESS: Well, we have uprights  
18 put on the ends of the 4 by 6's, in other  
19 words, one inshore and one offshore.

20 THE COURT: How high is the upright?

21 THE WITNESS: That depends upon  
22 how high the pipe goes.

23 THE COURT: And it goes up over  
24 the top of the pipe?

25 THE WITNESS: Yes, usually at

1  
2 least 12 inches over the pipe.

3 THE COURT: So, if the pipe is  
4 5 feet, the upright would go 6 feet,  
5 right, 6 feet off the deck, is that  
6 correct?

7 THE WITNESS: Yes.

8 THE COURT: How many of these  
9 uprights would you have?

10 THE WITNESS: One on each end,  
11 one on each sleeper.

12 THE COURT: Do you see the picture  
13 that has been marked Exhibit #1, in  
14 Evidence?

15 THE WITNESS: Yes.

16 THE COURT: Assuming that these  
17 pieces of pipe are 20 feet long, how  
18 many uprights would you have alongside  
19 these pipes?

20 THE WITNESS: At least 4 on each  
21 side.

22 THE COURT: So, there would be  
23 4 on the side towards the rail and 4  
24 on the other side?

25 THE WITNESS: Yes.

1  
2 THE COURT: No further questions  
3 at this time.

4 CROSS-EXAMINATION BY

5 MR. GREEN:

6 Q So, now you have brought into the  
7 picture sleeper uprights, is that correct?

8 A Yes.

9 Q Are there any other pieces of wood used?

10 A Yes.

11 Q What other pieces of wood are used?

12 A Braces.

13 Q Where would they run from and to?

14 A There would be one brace on the bottom of the  
15 uprights, one on the middle and one on the top.

16 THE COURT: What do you mean by  
17 a brace?

18 THE WITNESS: In other words, the  
19 uprights are this way, and we will put  
20 a brace against the side of the stanchion  
21 at an angle. This would be snoring it  
22 up.

23 THE COURT: That would be making  
24 right angles with the one on the bottom?

25 THE WITNESS: Yes.

1

Q Is there any other wood used?

2

A 2 by 4's.

3

Q Where would they be used?

4

A They would be used between the uprights.

5

Q Any other wood?

6

A No.

7

Q How about the chocks?

8

A That is a chock, that's what you call braces.

9

Q Oh, I see. The uprights and the braces,  
when you talk about them, you're talking about chocks,  
is that correct?

12

A Chocking, yes.

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: If you were about to  
release the wires holding the four  
pipes such as you see in Exhibit #1,  
in Evidence, and you did not see those  
braces, would you, as an experienced  
snapper and carpenter and assistant  
foreman, would you have considered that  
a danger signal?

THE WITNESS: I would have looked.

THE COURT: What do you mean you  
would have looked?

THE WITNESS: I would have looked

1  
2 to see if there was something wedged all  
3 the way underneath those pipes before I  
4 unlashed the wires.

5 THE COURT: You consider that a  
6 safe and prudent thing to do?

7 THE WITNESS: In my opinion, yes.

8 CROSS-EXAMINATION BY

9 MR. GREEN:

10 Q There is no question in your mind that  
11 the cargo that was lashed such as described, was  
12 perfectly lashed to go out to sea without chocking  
13 and braces and so forth, is that correct?

14 A Wait a minute, could you ask me that again,  
15 please?

16 Q There is no question in your mind as  
17 far as a ship going out to sea with lashing done in  
18 this manner, that the lashing was perfectly adequate  
19 without the use of uprights and braces and etc., is  
20 that correct?

21 A No, that's not correct, not over here, anyway,  
22 it's loaded over here differently. I don't know where  
23 it came from, but over here that wouldn't be correct.

24 Q You are not an expert all over the  
25 world, are you?

1  
2 A No.

3 THE COURT: The question was, safe  
4 at sea, we have a question here as to  
5 whether or not it was safe in a port.

6 Q Now, are you telling us that when lashers  
7 come to unload this cargo, that the lashing would be  
8 off and then the cargo would be taken out with the  
9 wooden braces in place?

10 A The braces are not in the way.

11 Q You mean the cargo is taken out without  
12 the braces being in the way?

13 A Yes, if they want to use the crib again, they  
14 can use it, if they wish.

15 Q Are you telling us that braces such as  
16 you described, are left in place and the cargo is  
17 taken out?

18 A Yes.

19 Q And, if you want to take the braces out  
20 and leave the lashings in place, and you unloosen the  
21 turnbuckles, would not the cargo shift very gradually?

22 A I can't answer that because I don't know, I  
23 don't know how much weight would be on it and I don't  
24 know how they're going to shift.

25 Q Sir, isn't it a fact that you testified

1  
2 to Mr. Giuffra's question that --

3 A You don't have to yell, I can hear you.

4 Q And after you remove the first lashing  
5 and the second lashing, that the cargo would not even  
6 shift?

7 A With one wire on it?

8 Q Yes.

9 A Yes, I did testify to that.

10 Q So, if one were to unsecure this cargo  
11 and one used a turnbuckle and all there was was one  
12 lashing left, then one used a turnbuckle, would this  
13 cargo unsecure very gradually?

14 A I don't know, but it's got to shift, it's got  
15 to shift as soon as you take the turnbuckle's tension  
16 off, it's going to shift. I don't know if it will be  
17 gradual or not.

18 Q You were brought here to testify as an  
19 expert, were you not?

20 A Yes.

21 Q And you understand that you are supposed  
22 to answer questions here today?

23 A Yes.

24 Q And you understood that you were to be  
25 cross-examined, is that correct?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Yes.

Q Now, taking this particular situation into mind, is there no question in your mind that if the turnbuckle was unloosened, this cargo would have spread gradually?

A Oh, the turnbuckle, sure.

MR. GREEN: I have no further questions.

MR. BUSHLOW: I have a few more.

DIRECT EXAMINATION BY:

MR. BUSHLOW:

Q What do you do after the crib is all made and after the cargo is in and lashed, what do you do?

MR. GREEN: Objection.

MR. BUSHLOW: Never mind, it does not make any difference. I'll withdraw the question.

THE COURT: Do you have any further questions, Mr. Green?

MR. GREEN: No, I am finished, Your Honor.

MR. GIUFFRA: Your Honor, I just want to make a motion to dismiss any

1  
2 discussion of alleged negligence or  
3 unseaworthiness. Judge, I think you  
4 have to submit the whole case, all at  
5 once.

6 MR. BUSHLOW: Are you all finished  
7 with this witness?

8 MR. GREEN: Yes.

9 MR. GIUFFRA: Yes.

10 THE COURT: Yes.

11 You maybe excused.

12 (Whereupon, the witness left the  
13 witness stand.)

14 THE COURT: Now, the question is,  
15 whether the defendants are going to rest  
16 without putting in any testimony. Are  
17 you going to put any testimony in?

18 MR. GIUFFRA: Your Honor, could  
19 we have a few days? My problem is that  
20 I picked up this case from Mr. Pelligrino  
21 and I have some other thoughts on it,  
22 so may I have a few more days to decide?  
23 What I'm trying to say, Your Honor, is  
24 that I will advise you in a certain period  
25 of time, whether or not I intend to bring

1  
2 in an expert.

3 THE COURT: Well, experts are only  
4 advisors of the triers of the facts and  
5 we are not bound by the testimony of  
6 experts, but you can bring whoever you  
7 want.

8 MR. GIUFFRÀ: Your Honor, upon  
9 reconsideration, we will rest this case,  
10 at this time.

11 MR. GREEN: I, too, will rest my  
12 case at this time.

13 MR. BUSHLOW: Well, I suppose you  
14 want the minutes before you do anything,  
15 is that correct, Your Honor?

16 THE COURT: Well, I tell you what  
17 you do, you make them up into a three-  
18 way deal, one original and three copies.

19 MR. GREEN: That's right, we will  
20 have the reporter submit the original  
21 to the Court and a copy to each of us.

22 MR. BUSHLOW: Your Honor, it is  
23 liability that it is the duty of the  
24 vessel to supply a safe place to work  
25 and there was the duty of the Plaintiff's

1  
2 employer to inspect the area before they  
3 sent a man down to do work.

4 Now, that does not mean that you  
5 can go blindly into an area, but I would  
6 say that the Plaintiff had a right to  
7 assume that this cargo was properly lashed  
8 and secured and that it was in a safe and  
9 workable condition. Also, Your Honor,  
10 because of the big size of these pipes,  
11 it was impossible to glance or look  
12 underneath the pipes, and to add to that,  
13 he was told, by him employer, to do the  
14 job as quick as possible, because there  
15 was men waiting to do other work which  
16 depended upon him unlashing, and I submit,  
17 Your Honor, that the Plaintiff had a  
18 right to expect that the pipes were in  
19 a safe condition to be unlashed.

20 THE COURT: Well, that's the very  
21 point, the point is, did he have the  
22 right to assume that.

23 MR. BUSHLOW: There is a duty  
24 on the part of the ship to provide a  
25 safe place to work and it is the duty

1  
2 of the Plaintiff's employer to make  
3 sure that when he is sent down to do a  
4 job, that the working conditions are  
5 safe.

6 THE COURT: Well, your Plaintiff  
7 could have stood alongside the rail,  
8 between the rail and the pipes for 48  
9 hours and he would not have gotten hurt,  
10 would he?

11 MR. BUSHLOW: If nothing was done  
12 to the lashing, that's absolutely right.

13 THE COURT: But, it was not until  
14 these lashings were released by the  
15 Plaintiff, therefore, changing the  
16 condition of the ship that the owner  
17 of the ship had it in, that the Plaintiff  
18 was injured. The Plaintiff was only  
19 injured after he unlashd those pipes.

20 MR. BUSHLOW: Well, he did not  
21 release the force, it was done by  
22 Anderson on the other side, he did not  
23 release that force.

24 MR. GREEN: Your Honor, I think  
25 Mr. Bushlow is talking about things

1  
2 that are not in evidence here.

3 THE COURT: Well, whatever Laws  
4 you want to submit, you may.

5 MR. GIUFFRA: When do you want  
6 us to submit them?

7 THE COURT: Well, it will take a  
8 couple of weeks for the minutes, but  
9 don't give me anything too elaborate.

10 MR. BUSHLOW: We'll arrange it  
11 among ourselves, if that's all right  
12 with you, Your Honor.

13 THE COURT: Very well.

14 This proceeding is adjourned, for  
15 the present time.

16 (Whereupon, at this time, the  
17 proceeding was concluded.)  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

163a

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u> (Mr. Giuffra)	<u>CROSS</u> (Mr. Green)
Marchese	11, 77	23	44, 72
Anderson	81, 115, 118	88, 120	101, 116
Martino	123, 157	137	149

C E R T I F I C A T E

STATE OF NEW YORK)

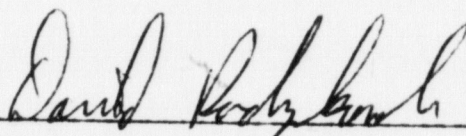
COUNTY OF KINGS )

I, **David Radzikowski**, a Notary Public  
within and for the State of New York, do hereby  
certify:

That the witness(s) whose examination(s)  
are hereinbefore set forth were duly sworn and  
that such examination(s) are true records of  
the testimonies given by such witness(s).

I further certify that I am not related  
to any of the parties to this action by blood  
or marriage, and that I am in no way interested  
in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set  
my hand this **11th** day of **June**, 1974.

  
\_\_\_\_\_

SERVICE OF 1 <sup>Copy</sup> ~~COPIES~~ OF THE WITHIN

Appendix

IS HEREBY ADMITTED.

DATED: 2/14/75  
Daugherty, Ryan, Dubouy, Kilgus, Duffin  
Robert H. Kilgus

Attorney for 3<sup>rd</sup> party Al Moore McCann

SERVICE OF 1 <sup>Copy</sup> ~~COPIES~~ OF THE WITHIN

Appendix

IS HEREBY ADMITTED.

DATED: 2/14/75

(5) Herbert Lasty

Attorney for 3<sup>rd</sup> party defendants  
Court Carpentry and Marine  
Contracting Co Inc